

Volume 3

Pages 386 - 622

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE WILLIAM H. ALSUP

WAYMO, LLC)	
)	
Plaintiff,)	
vs.)	No. C 17-00939 WHA
)	
UBER TECHNOLOGIES, LLC.,)	
OTTO TRUCKING, LLC, and)	
OTTOMOTTO, LLC)	
)	San Francisco, California
Defendants.)	Tuesday
)	February 6, 2018
)	7:22 a.m.

TRANSCRIPT OF PROCEEDINGS

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— — —

Tuesday, February 6, 2018

7:22 a.m.

P-R-O-C-E-E-D-I-N-G-S

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(The following proceedings were held in open court,
outside the presence of the jury:)

THE COURT: Good morning, everyone. Have a seat,
please.

What was it that was filed this morning that -- what was
it that was filed this morning that Waymo hasn't had a chance
to respond to?

MR. EISEMAN: Your Honor, we filed a brief this
morning responding to defendants' brief with respect to the
Stroz documents.

THE COURT: Right. I did see that.

MR. EISEMAN: I --

THE COURT: I thought there was something else that I
didn't -- what was it you wanted me to ask about?

Oh, there's one about Bill Gurley. All right. You need
to respond to that in due course.

MR. EISEMAN: He's not going to be called today, Your
Honor, so we will.

THE COURT: All right. So, listen, I have a few
things to take up with you.

I received a huge packet, very thick. And it's impossible
for an ordinary mortal to manhandle, so I had to then break it

1 up.

2 This is your deposition designations with all the
3 objections. And I did get -- manage to get -- so I broke it
4 up. And I'm giving you, now, my rulings on Mr. Bares. The
5 clerk will hand this to you now.

6 Angie, would you hand this to Waymo.

7 But the rest of it I want you to redo -- I'm handing that
8 also to you -- because the ones that you highlighted in blue
9 was so dark I could hardly read it. It took a magnifying
10 glass. I mean, what was going through your mind when put it in
11 such a dark blue? It might as well have been redacted.

12 That's number one.

13 Number two, you have so many pages in there that are just
14 lined out totally. You don't need to put in the lined-out
15 pages, the ones that are totally lined out. And I want you to
16 put one of these stickers on the pages where there is something
17 I've got to rule on.

18 I must have wasted half of my time going through page
19 after page that had nothing for me to rule on. I want you to
20 put a tag on there, I'll turn right to it, I'll say "in" or
21 "out." That's all I'll say. Sometimes I'll say, "Out, 403."

22 All right. So now you've got Mr. Bares. So you've got to
23 resubmit these.

24 **MR. JUDAH:** Yeah. Thank you, Your Honor.

25 **THE COURT:** And use -- like, yellow was good; but dark

1 blue, no good. Okay.

2 Now, on your problem with the Stroz report, I'll tell you
3 what I think the answer is based on many years of trial work
4 and 19 years on this job.

5 Uber hired Stroz. Now, I know that you say, "Oh, no, it
6 was MoFo that hired Stroz." Uber set up this elaborate system.
7 Even put in the best light for Uber, Uber wanted to get at the
8 truth of what was going on.

9 So, to my mind, anything that those investigators at Stroz
10 wrote down as having been said by Levandowski or anyone else is
11 accurate and will -- that's just step one. But Uber cannot be
12 heard to say that it's hearsay. It's -- it is so attributable
13 to Uber, it would be an injustice to say that Uber gets to run
14 away from that due diligence report.

15 So step one is Uber's stuck with it, at least stuck with
16 the conclusion that the witness, whoever that was, told Stroz
17 that information.

18 Now, there's a second step. It could be that that is
19 hearsay. For example, if witness X said, "Hey, witness Y told
20 me that he did ABC," now, that's a different problem. We will
21 certainly say that it's true that that was told to -- to the
22 Stroz people, but it's hearsay. So we'd have to figure out, is
23 there a hearsay exception to that?

24 Now, I was shocked to find, I said, "Oh, this is great.
25 Look, the lawyers did something good. It's only five pages."

1 Who is it up there who told me five pages?

2 I said, "For once, they came through."

3 And she said, "No, there's 300 pages -- 300 exhibits down
4 in the clerk's office somewhere."

5 I said, "What? 300 exhibits?"

6 Well, there's no way I can go through 300. I've given you
7 the ground rule, and you go through the 300 and you figure it
8 out.

9 You're stuck with that report on the Uber side. Too bad
10 for Uber that you set up this elaborate system. But you're
11 stuck with the fact that anything Stroz wrote down, it might as
12 well be that Uber wrote it down. But, still, there could be a
13 subsidiary problem.

14 Now, I'm also going to rule that all of those people like
15 Levandowski and Lior, they were Ottomotto at the time. I know
16 that they, on the Waymo side, took inconsistent positions on
17 that. All right. But, nevertheless, at the time of that
18 acquisition, they were Ottomotto. And Ottomotto is in the
19 case; Ottomotto is a defendant. So anything that they said
20 comes -- sails into evidence. The Levandowski memo, for
21 example -- the interview notes, sails into evidence because he
22 was -- there are two steps and all that.

23 Now, there could be other people who are not at Ottomotto.
24 I'm saying those are -- those, we'll have to figure out some
25 other way that those get into evidence.

1 That's the broad picture, number one.

2 Broad picture number two is the entire thing comes into
3 evidence from notice to Uber. Even if it was just one lawyer
4 at Uber who knew about it and read the report or even got the
5 report and didn't read it, they're stuck with everything in
6 there that came over -- over the transom to Uber. That's for
7 purposes of notice, meaning that they were on notice of all
8 the, quote, bad acts, close quote, that were lurking there in
9 the report.

10 Now, with the benefit of those two guidelines, I want you
11 to sort through the 300 on your own and bring to me the
12 problems that remain.

13 All right. I think I'm done with my part. Anything you
14 want to raise with me this morning?

15 **MR. GONZÁLEZ:** One brief thing, Your Honor.

16 If you recall, we raised with you previously the issue of
17 these YouTube videos, basically commercials for Waymo. And we
18 agreed that they could show one during opening statement. At
19 some point, you recall they showed one with the three cars
20 driving around.

21 Now they want to show a different video to the witness
22 who's on the stand right now, Mr. Dolgov. And our view is
23 enough is enough. It's irrelevant. It's prejudicial.

24 The jury doesn't need to see these cars driving around.
25 At one point, they pick up a blind guy and say, Aren't we great

1 for giving this blind guy a ride?

2 I just don't think we need that. That's not the issue in
3 trial.

4 **THE COURT:** All right.

5 **MR. JAFFE:** Your Honor, this is about a minute video.
6 It goes through a little bit of history of the program. And
7 the part that Mr. González is referring to is the world's first
8 autonomous ride, and I think it's an important part of the
9 history of the company.

10 Dr. Dolgov was personally involved in that and can testify
11 as such. I think it's important to give context in the history
12 and the development of the self-driving program.

13 **THE COURT:** All right. What do you say about the Good
14 Samaritan scene where the driverless car stops and picks up a
15 blind guy?

16 **MR. JAFFE:** I'm sorry?

17 **THE COURT:** What about the blind guy?

18 **MR. JAFFE:** That's part of the video. That's who they
19 took on the world's first autonomous drive was someone who was
20 blind.

21 **MR. GONZÁLEZ:** And, Your Honor, it's hearsay. You've
22 got somebody narrating, through the whole video, the history of
23 Waymo. It's all hearsay. And it's --

24 **THE COURT:** But is it untrue? Is it untrue what they
25 say --

1 **MR. GONZÁLEZ:** I --

2 **THE COURT:** -- in the video?

3 **MR. GONZÁLEZ:** I don't know, Your Honor.

4 **THE COURT:** Well, then, see, you -- why are you
5 objecting if it's not -- usually, you object when something's
6 untrue. But you're just objecting for the sake of objecting.

7 **MR. GONZÁLEZ:** No, we're objecting to it because it's
8 hearsay, Your Honor. Because they've got a video that's a
9 commercial of the company that's got somebody talking, and what
10 they're saying is hearsay.

11 If they want to ask the witness, "When did you give the
12 first person a ride?" they can say it was in January of 2009 or
13 whatever. He can give the history.

14 But you don't put on a video -- this is a -- you know
15 what? Can we just play it for Your Honor? It's one minute.
16 You need to see it to understand.

17 **THE COURT:** All right. Play it. Let's see it.

18 **MR. GONZÁLEZ:** Can you play it? What -- you guys want
19 to --

20 **MR. JAFFE:** Sure.

21 **THE COURT:** By the way, is that screen -- that big
22 screen there seems blurry to me. This screen is much clearer.
23 Maybe it's just me. Does this one seem blurry to you?

24 **MR. JAFFE:** A little bit.

25 **THE COURT:** All right. The one on the screen is

1 sharp. That one up there seems blurry.

2 All right. I'm watching -- is it going?

3 **MR. JAFFE:** For the record --

4 **THE COURT:** All right. So what --

5 (Video played.)

6 **THE COURT:** So what does it prove? It is hearsay.
7 What are you going to prove with this?

8 **MR. JAFFE:** We're not putting this into evidence.
9 This is a demonstrative that goes with his testimony and his
10 explanation as to the history of the Project Chauffeur and some
11 of the developments over time. I'm going to ask him on the
12 stand, can you explain to us what you're looking at and how
13 that relates to what you've just testified about?

14 **THE COURT:** Why can't he just testify to it?

15 **MR. JAFFE:** Well, these are visuals that accompany his
16 testimony. And if the concern is the narrator, we can turn it
17 down. I'm planning on asking him while the video is playing,
18 "Can you explain to us what we're looking at?"

19 **MR. GONZÁLEZ:** Your Honor, I've just got to tell you.
20 You know, this case is not about who -- goody two-shoes. You
21 know, they got this blind guy walking out to the car and
22 they've got the letters out there. He's the CEO of the blind
23 center.

24 I mean, come on, you know, it's about eight trade secrets.
25 This is so far removed. It's so far removed from the eight

1 trade secrets. "Testing every day since 2009." Is that really
2 true? You don't have witnesses come in and say that on a
3 video.

4 **THE COURT:** All right. Here's the thing: You can
5 show it. Turn off the audio. And he can narrate it under
6 oath. And if I think it's too -- if he gets out of hand, I'm
7 going to give a strong admonition to the jury that you might
8 regret. So don't abuse yourself.

9 All right. What else?

10 **MR. JAFFE:** Thank you, Your Honor.

11 **MS. DUNN:** Good morning, Your Honor.

12 The parties have done, I think, a good job of working out
13 the issues related to Mr. Kalanick's testimony, but there are
14 two issues that remain. The first is --

15 **THE COURT:** Is he going to come today?

16 **MS. DUNN:** As Waymo's witness, but I believe so.

17 **THE COURT:** Okay.

18 **MS. DUNN:** And actually as our witness due to an
19 agreement that we can go beyond the scope. So one of these,
20 I'll handle; the other, Ms. Goodman will handle.

21 But the first also relates to a video, which is that
22 Mr. Kalanick received a text message from Mr. Levandowski where
23 Mr. Levandowski includes a link to the movie *Wall Street*, where
24 Michael Douglas gives an impassioned speech --

25 **THE COURT:** I remember that. That's one of the best

1 moments in all of Hollywood.

2 (Laughter.)

3 **MS. DUNN:** That's right. And I'm glad Your Honor
4 mentioned Hollywood. It's a work of fiction, obviously.
5 And --

6 **THE COURT:** I'm going to take judicial notice that
7 it's all true.

8 (Laughter.)

9 **MS. DUNN:** May be true for Michael Douglas, but this
10 is not a speech given by Mr. Kalanick. So we believe this is
11 not relevant.

12 It is extremely prejudicial to play --

13 **THE COURT:** Let's say it is fictional. Let's say it
14 is totally fictional. But if Levandowski says, "Hey, this guy
15 is telling my story, greed, greed, greed," why isn't that
16 totally admissible?

17 **MS. DUNN:** Because it's completely attenuated from
18 anything in this case.

19 There's no indication Mr. Kalanick responded to this
20 message, that he remembers the message, that he ever looked at
21 the link, that he ever gave this speech, which is
22 Mr. Levandowski's suggestion.

23 It's unclear to me why this would come in. There's
24 literally no argument to play a free-floating work of fiction
25 and movie.

1 And even if Mr. Verhoeven makes some creative argument,
2 you're still playing --

3 **THE COURT:** Wait. Are you planning on putting in the
4 entire movie?

5 (Laughter.)

6 **THE COURT:** What are you trying to put in?

7 **MR. VERHOEVEN:** No, Your Honor.

8 What -- and I can hand up the exhibit if you'd like to
9 look at it. It's a text message dated March 19th, right --
10 right when the Stroz investigation is going on, personally from
11 Mr. Levandowski to Mr. Kalanick's personal phone number. And
12 the quote of the text is, "Here's the speech you need to give,
13 wink, wink." And there's a link to the YouTube video. And it
14 is indeed Michael Douglas's "greed is good" speech.

15 It's only about a minute long. And I think it's highly
16 relevant to show that these guys were in cahoots and this was
17 something they were doing that shows their state of mind. And
18 it's highly probative for the jury to see that they were both
19 privately talking in this manner, Your Honor.

20 It's something that he received. If, for example --

21 **THE COURT:** That who received?

22 **MR. VERHOEVEN:** Kalanick.

23 **THE COURT:** Kalanick.

24 **MR. VERHOEVEN:** So, for example, if Kalanick received
25 a text that attached a document, I would be able to show him

1 the document and I would be able to say, you know, "Do you
2 remember this? Did you read it? Did you determine what it
3 was?"

4 And, you know, it's admissible. And he can say whatever
5 he wants about it. If he wants to say, you know, "I never saw
6 it," the jury will be entitled to believe or not believe that.

7 But this is a personal --

8 **THE COURT:** Do we have any forensic evidence that he
9 clicked on the YouTube and actually watched it?

10 **MR. VERHOEVEN:** All we have is a text message, Your
11 Honor. We have to tell you, these text messages were all
12 deleted and forensically recovered. But it was to him --

13 **THE COURT:** This is one of the ones that was deleted
14 and then recovered; is that true? I want you to be clear on
15 that.

16 **MR. VERHOEVEN:** I don't know offhand, Your Honor, but
17 many, many of these texts were forensically recovered.

18 **THE COURT:** Well, okay. But --

19 **MR. VERHOEVEN:** I can find out, Your Honor.

20 **THE COURT:** That would be worth knowing.

21 **MR. VERHOEVEN:** But --

22 **THE COURT:** I'm going to wait until you have it ready
23 to go, but I'm not going to rule on whether or not -- I'm going
24 to wait to hear what Kalanick says about it before I decide
25 whether you get to show it.

1 **MR. VERHOEVEN:** Well, how can he answer without seeing
2 what it was?

3 **THE COURT:** Well, because he might recognize the text
4 message and might recognize the thing and say, "Yeah, I
5 remember that. You know, that was a great movie. That was --
6 I know the scene."

7 So he -- I don't know what he's going to say. Did you ask
8 him at his deposition?

9 **MR. VERHOEVEN:** No, I did not. I don't think I had
10 this, Your Honor.

11 But it's to him. And, under any other circumstance, I
12 would be able to show him a text that he received in the normal
13 course and ask him about the content of that text.

14 And if there's a link to another document, which this is,
15 I should be able to show him the document and say, "Did you
16 look at this?"

17 It's just like the text. It's just a link --

18 **THE COURT:** Maybe, I -- but your case is stronger if
19 he admits he actually did see it?

20 **MR. VERHOEVEN:** Of course it is, yes. But we're
21 talking about admissibility and whether I can show it to him
22 and ask him whether he saw it.

23 **THE COURT:** You might be right anyway, but I still
24 want to wait.

25 Okay. Go ahead.

1 **MS. DUNN:** Your Honor, first of all, these texts we
2 all produced to Mr. Verhoeven. And he never asked Mr. Kalanick
3 about this. There is nothing to suggest that he clicked on
4 this link and watched this video.

5 **THE COURT:** Wait. Are you telling me that this is not
6 one of the recovered ones? Does anyone actually know? Both
7 sides just quote, think, close quote. No one knows.

8 **MS. DUNN:** Ms. Goodman will address this area.

9 **MS. GOODMAN:** Judge, this text message was actually
10 produced by Mr. Levandowski. It bears the Levandowski Bates
11 stamp. And my recollection is these texts were produced in May
12 or June of this past year, prior to Mr. Kalanick's production
13 of text messages.

14 **THE COURT:** When was Kalanick deposed?

15 **MS. GOODMAN:** In July. So this text message was
16 available.

17 I also want to note for the record that this Trial
18 Exhibit 10312, Waymo has added a printout of the -- of the web
19 page that isn't actually part of the production.

20 So the first page is a Levandowski document, and then
21 Waymo just added two pages to it, which makes the exhibit --

22 **THE COURT:** I don't understand your point.

23 **MS. GOODMAN:** That they added to the text message.
24 Mr. Kalanick did not receive this next page of the exhibit.
25 All he received was a link.

1 **MR. VERHOEVEN:** We have no problem removing those
2 pages, Your Honor. We were trying to give notice as to what
3 the link was.

4 **MS. DUNN:** Well, the fact that Waymo is adding its own
5 visuals to exhibits that have been produced in this case is
6 disturbing and, I think, speaks to their motive in playing this
7 video, which the whole point is to sway the jury and play on
8 their emotions with no basis in fact or foundation.

9 This is -- you know, if Your Honor would like, there are
10 cases where courts have excluded similar evidence under a
11 similar circumstance. I can read those cites into the record.

12 But I think given that -- it just seems to play a
13 free-floating piece of fiction movie where Michael Douglas is
14 saying "greed is good" is designed for one purpose and one
15 purpose only, and that purpose is not permitted.

16 **THE COURT:** I'm not sure you're right about that.

17 **MR. VERHOEVEN:** Your Honor --

18 **THE COURT:** Part of the whole theory of the plaintiffs
19 here is Uber got greedy and wanted to jump on the subway and
20 cheat their way to the finish line. And greed fits into that
21 narrative.

22 I don't know. I --

23 **MS. DUNN:** Well, not with Hollywood movies, Your
24 Honor.

25 I mean, if they want to use the evidence they actually

1 have in this case and ask Mr. Kalanick about that, that's one
2 thing. They should be able to prove the case on the evidence
3 they have, not bring in, you know, Hollywood scenes.

4 **THE COURT:** This is evidence -- this is evidence that
5 is part of the res gestae of the case. Levandowski sends a
6 text with a link to the greed movie and says, "Wink, wink.
7 Give this speech."

8 All right. I'm going to withhold ruling on this until I
9 see how the examination of Kalanick goes on this point. So you
10 may have to do some serious work to lay the foundation. But
11 maybe it comes in. I'm not going to rule right now.

12 Okay. You said you had two points.

13 **MS. DUNN:** For the record, can I read the cites in
14 just so we have them?

15 **THE COURT:** No. You can read one cite in.

16 **MS. DUNN:** All right. 635 F.3d 480. It's an Eleventh
17 Circuit case from 2011.

18 **THE COURT:** Great. What else? You said there were
19 two points.

20 **MS. DUNN:** Ms. Goodman is going to handle the next
21 one.

22 **THE COURT:** All right. So say your name again,
23 please.

24 **MS. GOODMAN:** Martha Goodman.

25 **THE COURT:** Goodman. All right. Please, what's your

1 point?

2 **MS. GOODMAN:** We understand from conferring with Waymo
3 that they would like to use a letter that Mr. Kalanick received
4 from a number of investors, in connection with his resignation,
5 that asks him to resign.

6 To be completely forthright, the letter says one thing
7 about this lawsuit but does not tie in the lawsuit to the
8 reasons that the investors are requesting the -- his
9 resignation.

10 **THE COURT:** Could I see the letter, please?

11 **MS. GOODMAN:** Yeah.

12 **MR. VERHOEVEN:** By the way, that's a
13 misrepresentation. We told them we are not going to use the
14 letter or try to put it into evidence. We will only use it to
15 refresh his recollection. He already testified in deposition
16 to the evidence we want to elicit. And I want Your Honor to
17 know that we've said that.

18 **THE COURT:** All right. Well, what do you -- see,
19 there's --

20 **MR. VERHOEVEN:** There's a bunch of stuff in that
21 letter that's not appropriate, and we never intend to use it.

22 **THE COURT:** All right. But when you use something to
23 refresh memory, you never say it out loud.

24 **MR. VERHOEVEN:** That's correct, Your Honor.

25 **THE COURT:** You just hand him the document, and you

1 don't do theatrics and say, "Oh, see this? Does that refresh
2 your" -- no, you don't get to do that. You just say, "Here's
3 Exhibit 916. Please read that. Does that refresh your
4 memory?"

5 And then let's say he says no. That's it. You don't get
6 to use it anymore.

7 **MR. VERHOEVEN:** I understand, Your Honor. And that's
8 exactly what we told them, contrary to counsel's
9 representation --

10 **THE COURT:** All right. Ms. Goodman, what's wrong with
11 that?

12 **MS. GOODMAN:** Mr. Verhoeven is correct; he did tell me
13 that.

14 I didn't get to my next point, which was, after
15 Mr. Kalanick says "this doesn't refresh my recollection," they
16 then want to move on to his deposition testimony for
17 impeachment purposes, which they will mischaracterize because
18 he -- he answers one question and then continues on, which, if
19 Your Honor would like, I can read it to make clear that the way
20 in which they want to impeach him with this is improper.

21 So Mr. Verhoeven asked in deposition, "Did anyone" --

22 **THE COURT:** Read slowly so I can follow. Read slowly,
23 please.

24 **MS. GOODMAN:** Sure.

25 "Did anyone indicate to you that the Waymo lawsuit

1 was a factor in your movement of the position out of the
2 CEO?"

3 The deponent: "Yes."

4 "Q. Who did that?

5 "A. They didn't say it. It wasn't like a thing
6 they said. But it was in a letter that was given to
7 me -- that was told to me" --

8 **THE COURT:** Look, I got it. I just -- this is me
9 reading the newspapers, but I believe Mr. Kalanick was removed
10 or encouraged to leave for a long laundry list of problems that
11 had -- this case might have been one of them, but there was at
12 least five other things.

13 And it would be misleading to leave the impression with
14 the jury that he got fired on account of this case. So that
15 whole subject is off.

16 **MR. VERHOEVEN:** Well, Your Honor --

17 **THE COURT:** Don't even go there, please.

18 **MR. VERHOEVEN:** Can I just respond?

19 **THE COURT:** No. I understand your argument.
20 What is your argument? Go ahead. You can respond.

21 (Laughter.)

22 **MR. VERHOEVEN:** The question is that I asked him, "Was
23 it one factor?"

24 **THE COURT:** That's not enough. Then we have to get
25 into all of the other bad things to explain he got fired for a

1 whole -- this is a trick. I'm not going to fall for it.

2 You're not going to get into this.

3 **MR. VERHOEVEN:** Just for the record, so I can just
4 plead my case, Your Honor, the reason we think this is
5 important is it shows the significance -- they're trying to say
6 this is nothing, these aren't real trade secrets, this isn't a
7 big deal.

8 And I think it shows it's a big deal.

9 **THE COURT:** No. That's so far removed and attenuated
10 that doesn't even get halfway to first base. So that subject
11 matter is off. It's out, o-u-t.

12 All right. You can appeal that one.

13 Okay. Do you have anything more, Ms. Goodman?

14 **MS. GOODMAN:** I have one housekeeping matter, but it
15 could wait until the end of the day if Your Honor wants to get
16 the jury in.

17 **THE COURT:** Well, we'll see if the jury is present.
18 If they are, we'll get going.

19 Yes?

20 **MR. VERHOEVEN:** I have a couple more, just to avoid
21 interruptions --

22 **THE COURT:** The door is open, but I don't see anybody
23 there.

24 Please, go ahead.

25 **MR. VERHOEVEN:** -- for the Kalanick cross.

1 So we're going to play, before Kalanick, the deposition
2 testimony of Mr. Bares. And Mr. Bares took detailed notes of
3 meetings that he had with Mr. Kalanick and with the team. And
4 those will be in evidence after his deposition is played and he
5 authenticates all of those documents, Your Honor.

6 And so I intend to ask him about a few entries in his
7 notes where he says "meeting with TK" and has a summary. And
8 I -- I don't know for sure, but I think that they might jump up
9 and object to that as some sort of improper examination.

10 **THE COURT:** Look, if it's already in evidence --

11 **MR. VERHOEVEN:** Yes, Your Honor.

12 **THE COURT:** -- and it refers to TK --

13 **MR. VERHOEVEN:** Yes, Your Honor.

14 **THE COURT:** -- you can ask TK about that event.

15 **MR. VERHOEVEN:** Thank you.

16 **THE COURT:** What's wrong with that?

17 **MS. GOODMAN:** Your Honor, you already today said that
18 the Bares deposition clips weren't ready. You weren't able --

19 **THE COURT:** Well, I did the Bares. I handed the Bares
20 back.

21 **MS. GOODMAN:** Right. So they won't actually be in
22 evidence before Mr. Kalanick testifies, unless somehow Waymo is
23 able to get the clips ready for you before Mr. Kalanick takes
24 the stand in about an hour.

25 **MR. JUDAH:** Your Honor, fortunately, the section you

1 already made rulings on has those notes. So that section,
2 subject to confirmation that we have accurately transcribed
3 what your rulings are, that will be ready to play, you know,
4 in -- within minutes. So it will be before Mr. Kalanick.

5 **THE COURT:** All right. The notes that were taken
6 within Uber by Bares sail into evidence. I don't see how you
7 can possibly keep those out unless you had normally scandalous
8 stuff that had nothing to do with this case. So those are
9 going to come into evidence. Those are your company documents.

10 **MS. DUNN:** Your Honor, focusing for a second not on
11 the admissibility, but on the issue that Mr. Verhoeven brought
12 up, which is whether Mr. Kalanick can be cross-examined on the
13 notes of a co-worker. I believe you have said in a previous
14 hearing, indicated that that's not permissible.

15 **THE COURT:** Unless it's for impeachment. Impeachment
16 is where you hold back the document in secret, don't put it
17 into evidence, but hold it back to surprise the witness. And
18 I've said there it has to be true impeachment, meaning a
19 statement by Kalanick, not somebody else's notes.

20 But I made clear the last time that you -- I'm positive I
21 did. If it's already in evidence, the document is already in
22 evidence, and it makes reference to TK, then you can say,
23 "Okay, here's the minutes from that meeting. It refers to you.
24 Were you at that meeting? Did you say the things that are
25 attributed to you?"

1 So that's not a correct statement of my prior ruling. I
2 mean, I believe this is totally -- totally proper. If it gets
3 out of hand, I will put a stop to it. But normally, this will
4 be an okay way to proceed.

5 **MR. VERHOEVEN:** One last thing at the risk of
6 irritating Your Honor.

7 Mr. Kalanick, there is something that --

8 **THE COURT:** It's easy to do.

9 (Laughter)

10 **THE COURT:** It's not easy to do. I'm not irritated.

11 **MR. VERHOEVEN:** It concerns the Fifth Amendment. So
12 Mr. Kalanick, part of the evidence in this case shows that --
13 of course you know Mr. Levandowski took the Fifth Amendment.
14 And we've taken discovery.

15 And the evidence shows that notwithstanding that position,
16 Mr. Kalanick argued against the board to keep him and wanted to
17 keep him.

18 **THE COURT:** Keep who?

19 **MR. VERHOEVEN:** Mr. Levandowski at the company.

20 **THE COURT:** Uh-huh.

21 **MR. VERHOEVEN:** And was an advocate to keep him even
22 though he had invoked the Fifth.

23 And, as you know, you've ruled a on motion in limine we
24 filed about noncooperation. And I've noticed that in their --
25 they've given us some exhibits for their direct they're going

1 to do afterwards. And they have the firing letter and they
2 have the letter about returning the two laptops. So they're
3 going to go into noncooperation with this fellow, and it's not
4 fair to paint half the picture.

5 I mean, the -- here -- what was going on, what the truth
6 is, Mr. Kalanick was strongly advocating to keep him,
7 notwithstanding he wasn't cooperating with the -- or not --
8 notwithstanding that he was asserting the Fifth is what I
9 should say. We think he was cooperating but was still
10 asserting the Fifth.

11 **THE COURT:** Well, what was it that you're wanting in
12 evidence that I'm supposed to rule on now?

13 **MR. VERHOEVEN:** That Mr. Levandowski had taken the
14 Fifth and that Mr. Kalanick still did not think he should be
15 fired --

16 **THE COURT:** Here's the way I think -- it may be a good
17 point, but let's do this: You -- don't cover this in your --
18 wait until you see what they cover.

19 **MR. VERHOEVEN:** Yes, Your Honor.

20 **THE COURT:** And then it may be crystal clear that you
21 should be allowed to do this.

22 **MR. VERHOEVEN:** Thank you, Your Honor.

23 **THE COURT:** And I'm not saying yet that. I'm just
24 saying with the benefit of -- they're going to exceed the scope
25 of your cross.

1 **MR. VERHOEVEN:** Yes, sir.

2 **THE COURT:** That's already been agreed to. Then you
3 get to cross on that.

4 And if it seems only fair that the Fifth Amendment --
5 eventually I think it's going to come out anyway. It's a
6 question of timing. But I still am -- I'm still considering
7 the 403 implications, and it could be that depending on how you
8 pitch it with the witness, that it's only fair to bring out the
9 Fifth Amendment point.

10 **MR. VERHOEVEN:** Thank you, Your Honor.

11 **MS. DUNN:** Your Honor, just for the record, because we
12 may not get to discuss this later, I don't intend to elicit
13 anything from Mr. Kalanick that would open the door to this in
14 particular because, as Your Honor has recognized, the mention
15 of the Fifth Amendment can be extremely prejudicial. And
16 that's why Your Honor has put in place a process where he will
17 evaluate the questions to be posed to Mr. Levandowski, should
18 he appear and invoke.

19 And so we would strenuously object to raising this during
20 Mr. Kalanick's examination in a broad way that is not policed
21 and enforced by the Court.

22 **THE COURT:** Well, all right. But listen, Levandowski
23 is maybe the central witness in the case. The jury will be
24 wanting to hear from him. If he is not brought in to testify,
25 the jury is going to say Waymo didn't prove its case.

1 **MS. DUNN:** Your Honor, I'm not relitigating that.

2 **THE COURT:** So that it's going to -- they have the
3 right to bring him in and show how hard they tried, and the guy
4 has taken the Fifth Amendment. And, well, you know, that -- so
5 I think very likely it's going to come into evidence, but I
6 feel like we ought to wait and see how the whole case develops
7 before we make that final decision. Nevertheless, if you open
8 the door, it's going to come in on Kalanick.

9 Okay. Let's bring in our jury.

10 **MR. VERHOEVEN:** Thank you, Your Honor.

11 **MS. DUNN:** Thank you, Your Honor.

12 **THE COURT:** Everyone's here. We're going to bring in
13 the jury. What?

14 **MR. JACOBS:** We can do this now or later on.

15 I believe they're sealing the courtroom for Mr. Bares'
16 deposition testimony without a reason to keep the public out.

17 **THE COURT:** I don't think there's anything in Bares'
18 deposition that I saw that would warrant sealing the courtroom.
19 What's going on there?

20 **MR. JUDAH:** Your Honor, so we divided up the Bares'
21 testimony in order to minimize courtroom sealing; the nonsealed
22 version and the sealed version. The only one you reviewed was
23 the public one. The non -- the one that we request to be
24 sealed is testimony relating to Trade Secret 25. And you've
25 not seen that one yet.

1 **THE COURT:** Well, all right. We won't get to that
2 today. Is that right? Mr. Jacobs is looking like you didn't
3 say it quite right.

4 **MR. JUDAH:** So our goal is going to be to get you the
5 revised annotated designations. Mr. Bares' testimony can be
6 broken up with respect between the public and the nonpublic.
7 So I think we could play the sealed Bares next time we seal the
8 courtroom.

9 **THE COURT:** Yes, but Mr. Jacobs is saying that what
10 you want to hide from the public does not deserve to be hidden
11 from the public.

12 In fact, look, I want to say, this is for you newspaper
13 reporters out there, in the sealed portion, only about
14 two-thirds of it deserved to be sealed. There were things
15 about LiDAR, there were things about -- like these promotional
16 ads that you've put up there that the public could have seen.
17 And you can't do --

18 Make sure that door is closed.

19 One thing that bothers me about Waymo's case is you are
20 leaving the impression with the jury that you invented LiDAR,
21 that you invented self-driving cars, and that that's what this
22 case is about.

23 At some point, if this continues, I'm going to have to
24 interject and say, "No, it's about eight very specific things."

25 By putting that stuff under seal that looked like

1 promotional videos, you're making it look like, "Oh, this must
2 be secret. We had to exclude the public. This must be a great
3 secret. It's LiDAR. My God, it's LiDAR."

4 You did not invent LiDAR. And next time we go into a
5 sealed record, it's going to be -- it's going to be these eight
6 things and these eight things only. So we're not going to
7 exclude the public and leave false impressions with the jury
8 the way you did yesterday.

9 You're mostly guilty, but, at your own risk, your side was
10 a little guilty too.

11 So there. All right.

12 **MR. JACOBS:** So, Your Honor, I understood that they
13 submitted the entire transcript to you. If that's not the
14 case, then we have a different procedural problem.

15 **THE COURT:** Look. You're going to get to call this
16 guy once. And if I decide later that the stuff you want to do
17 under seal doesn't deserve it, then you don't get to use it at
18 all. So you -- you decide which way you want to jump on that.

19 **MR. JAFFE:** Your Honor, if I may address the sealing
20 issue briefly.

21 **THE COURT:** Yeah.

22 **MR. JAFFE:** Regarding Mr. Bares' sealed testimony,
23 Mr. Bares is the primary witness on the case regarding the Uber
24 side of the Trade Secret 25 because, as we've already talked
25 about at length, Mr. Levandowski is taking the Fifth Amendment.

1 So what we have are notes of conversations with Mr. Bares
2 and Mr. Levandowski talking about content from Trade Secret 25.
3 And what Mr. Bares -- his sealed testimony is walking through
4 these notes. And what the sealed portion is about is him
5 talking about the notes.

6 And we're going to put up the notes when they get into
7 evidence --

8 **THE COURT:** All right. If that's all true, then I
9 agree that ought to be under seal.

10 Is that all true?

11 **MR. JACOBS:** Well, it is partially true. It is their
12 allegation relating to Trade Secret 25.

13 But you've commented on this alleged trade secret before.
14 And I'll obscure the exact examples to avoid any issue.

15 This is the case where they say there's a scenario, dog
16 running into street, and the car has to watch out for the
17 car -- for the dog running into the street.

18 And you'll recall from the opening, on the left side
19 there's this -- there's the basic scenario, dog running into
20 the street. And then on the right side are the specific
21 parameters that they've clarified are the scope of the trade
22 secret.

23 When you read this transcript, Your Honor, that they're
24 proposing to seal, you'll find none of that. You'll find none
25 of those specific parameters.

1 **THE COURT:** All right. Then you've got to hand it up.
2 Hand up the proposed sealed part to me so I can review it at a
3 break.

4 **MR. JAFFE:** Your Honor, there are two issues. Number
5 one is, as I mentioned, what is going to go with his testimony
6 is a picture of the notes. That's issue one. So it's not just
7 the testimony. The jury is going to be looking at both, and
8 they need to see both to understand the context. That's issue
9 one.

10 Issue two is, this is the same thing they were doing on --
11 when we were trying to negotiate the short descriptions and
12 they wouldn't come up with one. They want to litigate the
13 scope of our trade secrets not in front of the jury. They
14 don't want the jury to decide these things. They want to have
15 them decided in the course of sealing the courtroom, which is
16 improper.

17 They -- this is their argument, that these things aren't
18 secret. That's fine, but that's for the jury to decide; not to
19 unseal them and put them out in the public domain.

20 **THE COURT:** But you abused it yesterday by putting
21 LiDAR up there on the screen like you invented LiDAR. That
22 should never have been under seal. That should have been
23 done -- I want the public -- we're just going to exclude the
24 public when we get down to these eight trade secrets. That's
25 it.

1 **MR. JAFFE:** Understood, Your Honor.

2 **MR. JACOBS:** Your Honor, I think you should look at
3 the whole transcript. And, of course, the document, if there's
4 an issue with the document, we've got a protocol for that. The
5 document doesn't have to be shown to the -- to the gallery.
6 But Mr. Bares' testimony is at a level of generality that is
7 impossible to --

8 **THE COURT:** I have to see it. And also give me
9 that -- those handwritten notes so I can follow it. I'll look
10 at that at a break.

11 **MR. JACOBS:** Thank you, Your Honor.

12 **THE COURT:** We've got to get going. It's 8 o'clock.
13 There's no more.

14 **MR. JUDAH:** Your Honor, if I could -- just one point.
15 So, for Mr. Bares, we would like to play the nonsealed
16 testimony before Mr. Kalanick, so --

17 **THE COURT:** Well, if it turns out that something
18 should have been in the unsealed part, it's going to be
19 excluded most likely because you've been playing games with
20 this. So you can play whatever you want to that I've already
21 approved.

22 **MR. JUDAH:** I think -- well, there's one issue. So
23 the counter-designations are -- there's no highlighting issue.
24 It's all yellow, and I flagged them. So the
25 counter-designations for the public portion, which is when it's

1 in a separate --

2 **THE COURT:** Wait a minute. You mean I didn't rule on
3 that? I thought I had. You were supposed to put everything in
4 there.

5 **MR. JAFFE:** Everything was in that packet, but you
6 only reviewed the first appendix in the packet.

7 **THE COURT:** Well, what -- in the first appendix, it
8 should have been both sides' submissions.

9 **MR. JUDAH:** It was. It was -- well, it was Waymo's,
10 and then the -- within that first section was Waymo's
11 designations and the completeness objections. And then the
12 counters were as --

13 **THE COURT:** All right. Give it to me, and I'll -- I
14 thought I had reviewed the entire thing.

15 All right. So let's bring in the jury.

16 **MR. JAFFE:** Your Honor, I have just one procedural
17 point.

18 **THE COURT:** No, no. Well, what is that?

19 **MR. JAFFE:** It's for -- it's regarding Dolgov's
20 testimony.

21 **THE COURT:** All right.

22 **MR. JAFFE:** We had talked yesterday about doing a
23 public versus a sealed session. And I had asked Your Honor's
24 guidance whether you wanted to do an open direct, open cross,
25 closed direct, closed cross. And I wanted to get Your Honor's

1 guidance whether that was still the case or whether you wanted
2 to do it in one --

3 **THE COURT:** Do everything. I mean, you can do it
4 publicly first, including the cross, and then we'll have a
5 sealed part.

6 **MR. JAFFE:** Thank you, Your Honor.

7 **THE COURT:** All right. Now, bring in our jury,
8 please.

9 (Jury enters at 8:02 a.m.)

10 **THE COURT:** Thank you. Thank you. Welcome back.
11 Everyone be seated.

12 I want to say how great it is to have a jury like you that
13 is here on time and so attentive and ready to go. So thank you
14 for that.

15 All right. Is our witness here?

16 **MR. JAFFE:** He's here, Your Honor.

17 **THE COURT:** Remind us his name, Dolgov?

18 **MR. JAFFE:** Dr. Dolgov, that's correct, Your Honor.

19 **THE COURT:** Yes, all right.

20 Okay. Welcome back. Please have a seat. I remind you
21 you're still under oath. Please adjust the microphone so it
22 will catch your voice.

23 **DMITRI DOLGOV,**
24 called as a witness for the Plaintiff, having been previously
25 sworn, testified as follows:

1 **THE COURT:** And, ladies and gentlemen, remember we had
2 ten minutes of direct testimony from this witness yesterday.
3 And now we're going to resume right there, okay, where we left
4 off.

5 Please go ahead, Mr. Jaffe.

6 **DIRECT EXAMINATION (RESUMED)**

7 **BY MR. JAFFE:**

8 **Q.** Good morning, Mr. Dolgov.

9 **A.** Good morning.

10 **Q.** If you recall, when we left off yesterday afternoon you
11 were explaining Waymo's self-driving car technology. And, in
12 particular, we were talking about those four questions.

13 I want to go back in time in history. When -- in the
14 first days of Project Chauffeur, Google's self-driving project,
15 could Waymo's technology answer those four questions?

16 **A.** Not in a way that would allow them to drive on public
17 roads.

18 **Q.** Did there come a time when Project Chauffeur was ready to
19 take its cars on public roads?

20 **A.** Yes. I think middle of 2009 is when.

21 **Q.** Where did you decide to drive them?

22 **A.** We mostly drove around the Bay Area.

23 **Q.** Did you pick any particular routes?

24 **A.** Yeah. We had -- actually, we had a milestone that we
25 created for ourselves to drive ten very specific routes.

1 Q. And can you give some examples of what those routes were?

2 A. Yeah. We had a -- I think a couple kind of going around
3 Lake Tahoe and through the mountains. We had one that spent a
4 lot of time on freeways. I think it went through all of the
5 bridges in the Bay Area. And another one that started in
6 Mountain View and went to San Francisco. Each one was about a
7 hundred miles long.

8 Q. What criteria did you use to pick these routes?

9 A. So we picked them to sample all the different conditions
10 that cars might encounter. Mountainous roads, urban
11 environments. So we really wanted to understand the full
12 complexity of the problem that we were facing here.

13 Q. Did you achieve the milestone that you mentioned?

14 A. We did.

15 Q. How long did that take?

16 A. It took us about a year and three-quarters. I think it's
17 the fall of 2010 when we finished the last one.

18 Q. Did Project Chauffeur have any other significant goals in
19 these early days?

20 A. We did. Another one was to drive 100,000 miles in full
21 autonomous mode.

22 Q. You said -- I think you said 100,000 miles. Why 100,000
23 miles?

24 A. So this was -- back in those days, this was a huge number.
25 It was orders of magnitude more than, you know, cars have

1 driven in that, you know, autonomous mode at that point. And
2 we wanted to gain experience.

3 Q. Has Waymo continued to accumulate test miles through
4 today?

5 A. Yes.

6 Q. About how many miles has -- test miles in autonomous mode
7 has Waymo contributed or driven today?

8 A. We're, I think, just a bit over 4 million miles.

9 Q. I'd like to talk now about some of the specific technology
10 in the hardware in Waymo's self-driving car.

11 Could you please give us an overview of the sensors that
12 are on Waymo's self-driving car?

13 A. Sure. We have lasers or LiDARs. We have cameras. We
14 have radars. And we have some microphones.

15 MR. JAFFE: Okay. If we could show WDX3-7 at this
16 time, please.

17 (Photograph displayed.)

18 BY MR. JAFFE:

19 Q. Are these the sensors that you were just referring to?

20 A. That's right.

21 Q. Okay. Is one of these sensors most important to Waymo's
22 self-driving technology?

23 A. The way we built the system, I would say that the LiDAR
24 provides primary functionality for most of the modules that are
25 critical for the performance of our system.

1 Q. Why is that?

2 A. So the LiDAR gives you very rich data about the 3D
3 structure of the world that is incredibly useful for computers
4 to understand what's happening around them.

5 Q. We -- we're going to hear a lot about LiDAR in this case.
6 We've heard about it already. Can you briefly please explain
7 for the jury what is LiDAR and how does it work?

8 A. Sure. So at a very high level, the LiDAR will shoot out a
9 pulse of light into the world, and that pulse of light will,
10 most of the time, hit something and then come back. So you can
11 measure that reflection. So you can time how long it takes
12 that light to travel out and back and combine that with the
13 speed of light. And you can measure the distance to whatever
14 that light happened to hit.

15 Q. Why is that useful in self-driving vehicles?

16 A. So, you know, you do it not just once. You do it kind of
17 millions of times. You send out, you know, millions of these
18 pulses every second and you do it all around you. So, you
19 know, you measure kind of the distance to all of the things
20 around you and, you know, combined, that gives you this 3D
21 picture of the world around you.

22 MR. JAFFE: If we could -- Mr. Fisher, if we could put
23 up WDX3-8, please.

24 (Photograph displayed.)
25

1 **BY MR. JAFFE:**

2 **Q.** Can you explain what we're looking at here in this
3 picture?

4 **A.** Sure. This is our car. That's the model that you see in
5 the middle driving through a parking lot. And what you're
6 seeing is the output of its sensors.

7 **Q.** In a situation like what we're seeing in this picture, in
8 this video, how might the self-driving car use the LiDAR data?
9 (Video playing.)

10 **A.** What you're seeing is all of the points that come back
11 from the lasers. And, you know, that tells us that, for
12 example, the road in front of us is clear. It shows us, you
13 know, these returns from the cars in the parking lot. So, you
14 know, that is information useful to our car that helps
15 understand that those are the relevant objects in the
16 environment.

17 **Q.** Thanks.

18 If you could slow down a little bit, that would be
19 helpful. Thank you.

20 Okay. Dr. Dolgov, where do the LiDAR sensors on Waymo's
21 current car -- or current cars come from?

22 **A.** We build them.

23 **Q.** Are these sensors available to buy off the shelf?

24 **A.** No.

25 **Q.** Why doesn't Waymo buy LiDAR sensors in the open market?

1 A. They don't exist.

2 Q. Over the years, about how many custom LiDARs has Waymo
3 designed over time?

4 A. About six major models.

5 Q. And then just to conclude in the open session before we go
6 into the closed session.

7 MR. JAFFE: If we can show WDX10, the video that we
8 looked at this morning, Mr. Fisher.

9 BY MR. JAFFE:

10 Q. And we're going to play it without the sound.

11 (Video played.)

12 Q. Can you explain to the jury, after we get through this one
13 part, the -- what we are looking at?

14 A. So we are looking at the video that we at Waymo put
15 together to share with the world when we created the company,
16 and show some of the technology and some of the milestones we
17 went through.

18 Q. And what are these different cars that we're looking at?

19 A. Oh, these are the different generations of cars and
20 self-driving hardware that we built over the years. And we had
21 a prototype of the golf cart that you saw, then we started with
22 a Prius, then we used the Lexus. Then we built up this
23 marshmallow-looking thing. We called it the Firefly. And I
24 think those are the generations that you're seeing in this
25 video.

1 Q. And what's -- what's happening in the video right now with
2 the gentleman in the back of the car?

3 A. Oh, this is from 2015. This gentleman is Steve Mahan. He
4 happens to be blind, and he is driving through, you know,
5 public roads in a car that has no steering wheel or pedals.
6 And this is a big milestone for us in the fall of 2015.

7 Q. You've been working in this industry for a number of years
8 now. How does it feel that self-driving cars is now kind of
9 becoming a reality?

10 A. Amazing.

11 And I've been working on this for quite a while, as you
12 said, since 2009. So it's been an incredible journey to see
13 this go from, like, the very basic research or the DARPA
14 competition days where we just had cars operate like either in
15 a desert or a fake environment to, you know, at this point,
16 we're going to have cars without human drivers on regular
17 roads.

18 MR. JAFFE: Thank you, Dr. Dolgov. This is all the
19 questions I have for the open session.

20 THE COURT: I want you to be considering the following
21 because we are yanking the public around here. And that is,
22 after the public session, we go to the next witness. And then
23 we -- so that we're not constantly moving people in and out.
24 And then when we have a convenient point, we'll bring this
25 witness back for the private -- for the secret part.

1 **MR. JAFFE:** I think this is the only witness where
2 we're going to have to go under seal today.

3 **THE COURT:** Well, then, it might be good to do this in
4 tandem with a break where the public can go enjoy themselves
5 and get some coffee, and then have a longer break, maybe. I'll
6 think about it, but I -- it's important that we -- this is a
7 public trial, except where there's good cause and I can
8 rearrange. You see the point.

9 All right. Are you going to cross-examine, Mr. González?

10 **MR. GONZÁLEZ:** Yes, Your Honor, we will. And we're
11 fine with what you proposed with going on to the next witness
12 and then --

13 **THE COURT:** All right. Good. Please -- please go
14 over there to where Mr. Jaffe is, so you'll get closer to the
15 witness.

16 **MR. GONZÁLEZ:** May I approach, Your Honor?

17 **THE COURT:** You may.

18 **CROSS-EXAMINATION**

19 **BY MR. GONZÁLEZ:**

20 **Q.** Sir, I'd like to clarify one thing at the outset. Can you
21 and I agree that Google Waymo did not invent LiDAR?

22 **A.** That's true.

23 **Q.** In fact, before you came to Google, you worked on
24 autonomous vehicles at Stanford; right?

25 **A.** That's true.

1 Q. And that Stanford autonomous vehicle that you worked on
2 had a Velodyne LiDAR; correct?

3 A. It did.

4 Q. And that LiDAR had 64 laser beams; right?

5 A. Yes.

6 Q. So you would agree that having 64 laser beams is not a
7 secret?

8 A. No, it's not.

9 Q. And from 2006 to 2009, you worked on self-driving cars for
10 Toyota; correct?

11 A. That's correct.

12 Q. And Toyota also used a Velodyne LiDAR; correct?

13 A. That's correct. That was one of the LiDARs that we had on
14 our cars.

15 Q. With 64 beams; right?

16 A. That was one of them. I believe so, yeah.

17 Q. And you understand that the cars that Uber has driving
18 around also have a Velodyne LiDAR; correct?

19 A. Yeah, I think so. Yeah.

20 Q. And Google -- or Waymo, you don't contend that your trade
21 secrets are in the Velodyne LiDAR, do you?

22 A. No, I don't believe so.

23 Q. All right. Now, you gave some testimony about goals,
24 different goals.

25 One of the things that Google has done is it has set up

1 bonus programs for your engineers to motivate them to reach
2 those goals; right?

3 **A.** That's correct.

4 **Q.** One of the bonus programs that has been set up to motivate
5 the engineers is that when you apply for a patent, you get
6 \$5,000; right?

7 **A.** I think that number has changed throughout the years, so
8 that came off the top of my head. And I think we might have a
9 different program at Waymo. So I'm not sure about the numbers.

10 **Q.** Okay. You get money if you apply for a patent, and you
11 just don't remember the exact amount because it may have
12 changed over time. Is that fair?

13 **A.** So there are a couple of -- you know, the part about time,
14 that's true. And there's also different stages of the process.

15 Like I said, you get money when you apply for the patent.
16 Then there's an invention disclosure and other steps. And I
17 can't quite remember, you know, when you get the money and, you
18 know, how much.

19 **Q.** Okay. But, in any event, one thing we can agree on is
20 that if you apply for a patent and get it, you're going to get
21 money as a bonus from Google; correct?

22 **A.** At some point in time and place, yes.

23 **Q.** And, in fact, you have applied for a number of different
24 patents; correct?

25 **A.** I think I'm an inventor listed on a number of patents,

1 yeah.

2 **Q.** And you --

3 **A.** I didn't apply personally on all of them.

4 **Q.** I'm sorry.

5 Sometimes you are a sole inventor and sometimes you're
6 listed as an inventor with other people; correct?

7 **A.** That's correct.

8 **Q.** And if it's two of you, if you and another engineer get
9 together and come up with a great idea and apply for a patent,
10 you both will get \$5,000; right?

11 **A.** I think there's a scheme where, you know, it doesn't just,
12 you know, grow linearly with, like, adding more people.

13 Everybody gets the same number. I think what you said about
14 two people might be true. But then, yeah, if you add more,
15 then it just caps at the total amount and you have to split it.

16 **Q.** Okay. I want to make sure the jury understood that.

17 If there's just two inventors, then you would each get the
18 same monetary bonus; but if there's more than two, then you
19 would have to split it up. Is that generally --

20 **A.** Yes. That's my recollection of the program that at least
21 Google had at some point in time, yeah.

22 **Q.** Okay. Well, that program was there when Mr. Levandowski
23 was there; true?

24 **A.** For part of it, yeah. I think Google ramped down that
25 program.

1 Q. Now, you understand that this trial is about eight
2 specific trade secrets; right?

3 A. I think so, yeah.

4 Q. Those are ideas that presumably, according to Google,
5 somebody at Google came up with; right?

6 A. Yes.

7 Q. And tell the jury who received the bonus for those great
8 ideas that they're claiming are trade secrets?

9 A. So I guess on trade secrets, the best I understand, it is
10 some information that a number of people developed and is, you
11 know, something that is valuable and proprietary to us.

12 It is not clearly mapped as, like, the inventors on a
13 patent system. So some of the stuff, I imagine, many, many,
14 many people all across the team contributed to the entirety of
15 what is --

16 THE COURT: Is your answer nobody?

17 THE WITNESS: No. I think my answer is many, many
18 people.

19 THE COURT: Many people got bonuses for trade secrets.
20 Is that what you're saying?

21 THE WITNESS: No, no. I think the question was, who
22 contributed to the trade secrets?

23 THE COURT: No, no. You're not answering his
24 question.

25 Ask your question again.

1 **BY MR. GONZÁLEZ:**

2 **Q.** There are eight trade secrets in this case, just eight.
3 Tell the jury, who are the people that got bonuses for these
4 eight things that are supposedly great ideas that are of --

5 **THE COURT:** Well, wait a minute.

6 **BY MR. GONZÁLEZ:**

7 **Q.** -- that are ideas that are valuable?

8 **THE COURT:** Wait.

9 **MR. GONZÁLEZ:** Okay. I'll stop the question after
10 trade secrets.

11 (Laughter.)

12 **THE COURT:** You were okay for a while.

13 (Laughter.)

14 **MR. GONZÁLEZ:** Let me rephrase it, Your Honor.

15 **BY MR. GONZÁLEZ:**

16 **Q.** Tell the jury, who are the people that got bonuses for
17 these eight trade secrets?

18 **THE COURT:** Fair question.

19 Please answer.

20 **THE WITNESS:** I don't know.

21 **BY MR. GONZÁLEZ:**

22 **Q.** Nobody did; isn't that right?

23 **A.** I don't think we do trade secrets to bonus mappings.

24 **Q.** Right. So that if somebody came up with a great idea and
25 they applied for a patent, they get money. But if it's just a

1 trade secret, then you don't; right?

2 **A.** I wouldn't call it just a trade secret.

3 **MR. JAFFE:** Your Honor?

4 **THE COURT:** Yes?

5 **MR. JAFFE:** I'd object on relevance ground here, and
6 it's confusing the jury for the reason that Mr. Verhoeven --

7 **THE COURT:** Overruled. This is a proper line of
8 cross-examination.

9 Please continue.

10 **BY MR. GONZÁLEZ:**

11 **Q.** Sir, whoever it is -- and the jury hasn't heard
12 testimony -- do you know? You said earlier that you supervise
13 hundreds of engineers; right?

14 **A.** That's correct.

15 **Q.** Do you know? Can you tell us, who are the engineers that
16 came up with the eight trade secrets that this trial is about?

17 **A.** I can't name specific names. It was a number of people
18 throughout the team for, you know, many years. So it's hard
19 for me to very precisely answer that question.

20 **Q.** Was there ever a hallelujah moment? Was there ever a
21 moment when you were told about any of these eight trade
22 secrets and you said, "Wow, what a great idea"? Was there ever
23 a moment like that?

24 **A.** We have a number of hallelujah -- like, you know, big
25 moments where people solve a really hard problem and they get

1 excited and tell me about it.

2 Actually, I don't think I know the full eight trade
3 secrets that you're talking about, so I don't think I can
4 answer that question well. And even for the ones that I know,
5 the process goes back years and maybe -- also, I don't think I
6 can give a very crisp answer.

7 **Q.** You're telling me you're sitting here right now, you don't
8 even know what the eight trade secrets are that we're here to
9 try? You don't know?

10 **A.** I know some.

11 **Q.** Okay. Of the eight, how many do you know?

12 **A.** I am mostly familiar with two.

13 **Q.** All right. Do you have numbers?

14 **THE COURT:** Wait, wait.

15 **MR. JAFFE:** Your Honor, I just want to be careful
16 about --

17 **MR. GONZÁLEZ:** Just numbers. Just numbers.

18 **BY MR. GONZÁLEZ:**

19 **Q.** Do you have the numbers? The jury has got a list of them
20 in their book somewhere. I think we gave them a sheet of
21 paper.

22 Do you have the numbers of the two you're familiar with?

23 **A.** No.

24 **Q.** Okay.

25 **THE COURT:** You can use a shorthand version. You've

1 agreed that we can use shorthand versions; right?

2 **MR. GONZÁLEZ:** Yes.

3 **THE COURT:** All right. Why don't you hand that list
4 to the witness. Maybe he can identify the two he's talking
5 about.

6 **MR. GONZÁLEZ:** Precisely. May I just point something
7 out to the witness?

8 **BY MR. GONZÁLEZ:**

9 **Q.** So what you're allowed to say is what's in the parens. Do
10 you see the brackets, the parens?

11 **THE COURT:** Or the number.

12 **BY MR. GONZÁLEZ:**

13 **Q.** Yeah, or the number. So can you please identify for the
14 jury the number and then just read what's in the parens that
15 goes along with that number.

16 **MR. GONZÁLEZ:** And I'm going to stand here, Your
17 Honor, just for a minute because I may need -- well, I'll move.

18 **BY MR. GONZÁLEZ:**

19 **Q.** So what are the two trade secrets that you are familiar
20 with?

21 **A.** So you want the number and the description in parens?

22 **Q.** Please.

23 **A.** It's Number 25, self-driving car test scenarios and
24 specifications. And Number 111, MBr, LiDAR design to avoid.

25 **Q.** All right. Let's take 111 as an example, the LiDAR

1 design. Can you tell the jury who came up with that trade
2 secret?

3 **A.** You know, there are a number of people who were involved.
4 And what I understand is claimed as a secret both on the
5 hardware side and on the software side, but it's not like there
6 was a specific set of people that we've identified, to the best
7 of my knowledge.

8 **Q.** Okay. So understanding we're having a jury trial, you're
9 not even prepared to say who came up with Trade Secret 111, are
10 you?

11 **A.** I don't have specific names.

12 **Q.** Okay. Can you tell us when -- when did someone come up
13 with Trade Secret 111?

14 **A.** So this is a design to avoid. So this is, you know,
15 something that we've built up experience on. I would -- you
16 know, I can give you a rough time frame. I think it was about
17 2011.

18 **Q.** Can you imagine in your mind a moment when this trade
19 secret came to your attention?

20 **A.** I think I can, you know, subject to this being, you know,
21 a few years -- quite a few years ago. I can roughly recall the
22 time when I and other folks on the team had the realization
23 that I think is captured by this trade secret.

24 **Q.** Okay. At that moment when you had the realization, did
25 anybody get any kind of bonus for that?

1 A. Not that I'm aware of.

2 Q. And, by the way, from time to time, you report to
3 management about how your team is doing; right?

4 A. I do.

5 Q. You give them updates; correct?

6 A. Correct.

7 Q. Can you identify for this jury any update ever to your
8 management where you said to management, "Wow, look what we've
9 come up with," and where you identify any of the eight trade
10 secrets to management as a new idea or discovery?

11 A. So for the one we just discussed, it was a design to
12 avoid, it was a very small group of us at that point. So I
13 think my management at that point was directly involved in the
14 process. So, you know, it was kind of a group realization.

15 The other one that we just spoke about, you know, it's --
16 it's something that I'm sure came up in the process of our
17 discussion of updates.

18 Q. Well, you now have a list of the other six. And I don't
19 want to take too much time, but I want to give you an
20 opportunity to answer this question.

21 Can you identify any moment when you ever reported to
22 management that any of those other six things -- I won't say
23 what they are, but you can see them -- are some new discovery
24 that you just made? Can you identify any moment in time when
25 you did that?

1 **A.** Just to be clear, when I did it to my management, not when
2 somebody else did it to theirs?

3 **Q.** I tell you what, whatever you remember. If you remember a
4 moment when you told management, tell us that. If you remember
5 a moment when somebody else told management, "Wow, look what we
6 just discovered," tell us that.

7 **A.** So this is -- you know, maybe it's easier for me just to
8 speak to the ones that we just discussed. The other ones, I
9 see about a paragraph. And, you know, I'd have to go look more
10 carefully.

11 I think there's a lot of really technical juicy stuff in
12 all of those. So there are specific aspects of this that I'm
13 sure all of us had, you know, aha moments, but I would have to
14 take a lot more time.

15 For the ones we just talked about, I'm sure there are aha
16 moments with --

17 **THE COURT:** Well, he's not asking what you're sure of;
18 he's asking you, do you have an actual memory of the moment
19 when you told management, "Look at what a great idea we came up
20 with." And then the follow-up question is going to be "show us
21 the memo," most likely.

22 So you need to have an actual memory that you did this or
23 that it was a verbal conversation, whatever it was. But to say
24 "I'm sure" is not answering his question.

25 **THE WITNESS:** No.

1 **THE COURT:** All right. Next question.

2 **MR. GONZÁLEZ:** Your Honor, I would like to briefly
3 show the jury a patent, Trial Exhibit 1049.

4 **THE COURT:** What?

5 **MR. GONZÁLEZ:** I'd like to show the jury, briefly, a
6 patent, Exhibit 1049, just to very briefly show them what a
7 patent is.

8 **THE COURT:** All right.

9 What's wrong with that?

10 **MR. JAFFE:** Your Honor, we objected on foundation
11 grounds. And I don't believe it was actually --

12 **THE COURT:** Well, he's an inventor on patents.

13 **MR. JAFFE:** If it's the patent that I'm thinking of,
14 he's not an inventor on it.

15 **MR. GONZÁLEZ:** It's a Google patent, Your Honor.

16 **THE COURT:** What's that? I think I -- we'll see where
17 it goes.

18 Go ahead. Overruled. Please go ahead.

1 **BY MR. GONZÁLEZ:**

2 **Q.** Turn to Exhibit 1049, please.

3 (Document displayed.)

4 **Q.** Just very briefly, sir, you understand that this is a
5 patent and the applicant is Google on this patent; correct?

6 **A.** Yes.

7 **Q.** And when you talk about patents, do you normally describe
8 them by using the last three numbers of the patent number? Do
9 you see that?

10 **A.** I'm not sure.

11 **Q.** And the date of the patent, just this example that I
12 picked, is 2014; right?

13 **A.** That's right.

14 **Q.** And then it lists the number of inventors that the jury
15 sees. And it includes a number of people that they may have
16 already heard about: Gaetan, Pierre, Anthony Levandowski. Do
17 you see that?

18 **A.** I do.

19 **Q.** This is an example of an idea where a number of different
20 people contributed and, therefore, they are all listed as
21 inventors; right?

22 **A.** That's correct.

23 **Q.** And you understand that patents are publicly available;
24 correct?

25 **A.** Yes, once they're -- well, once some are published. I

1 think some are not publicly disclosed.

2 **Q.** Once the patent is actually issued, once you actually get
3 the patent like this, you understand that that's publicly
4 available; correct?

5 **A.** Right.

6 **Q.** So, for example, the various patents that you've gotten,
7 you understand that those are available for the public to
8 review; right?

9 **A.** Yes.

10 **Q.** And so you understand that what is in the patent is not a
11 trade secret? You understand that; right?

12 **A.** I mean, I'm not a lawyer, but yes, it seems -- that sounds
13 right.

14 **Q.** All right. Just a couple more questions.

15 **MR. GONZÁLEZ:** Andrew, turn to page 7, please.

16 (Document displayed.)

17 **BY MR. GONZÁLEZ:**

18 **Q.** So that, for example, this patent has this figure,
19 Figure 4 on page 7. And you understand that this is a PCB
20 board; correct?

21 **A.** I would have to look at the rest of it.

22 **THE COURT:** Please take your time and do whatever you
23 need to do to answer the question.

24 **THE WITNESS:** So let me -- I guess, let me try to find
25 the reference to this figure.

1 Okay. So I see a description of that figure, and it
2 states that it's an example transmit block.

3 **BY MR. GONZÁLEZ:**

4 **Q.** All right. You understand this is a transmit block?

5 **A.** Yes.

6 **Q.** And is that sometimes referred to as the PCB board?

7 **A.** So the PCB board might be, you know, part of that or an
8 entirety of it. Now we're getting into technicalities.

9 **Q.** All right. Fine. And this transmit block shows that on
10 one side it's curved. Do you see that?

11 **A.** Yes.

12 **Q.** And the general shape of it is like a rectangle; right?

13 **A.** Like a -- I don't know -- trapezoid, yeah.

14 **Q.** And those little things -- underneath the curve, you see
15 it looks like a T, they're in green now?

16 **A.** Yeah.

17 **Q.** Those are the diodes; right?

18 **A.** Dials?

19 **Q.** Diodes, the lasers?

20 **A.** Yeah.

21 **Q.** And then, if you go just below that, you see there's,
22 like, three circles --

23 **MR. GONZÁLEZ:** Andrew, can you go to the middle
24 circle. There you go.

1 **BY MR. GONZÁLEZ:**

2 **Q.** You see those two middle circles?

3 **A.** I do.

4 **Q.** Those are holes in the block; correct?

5 **A.** They look like holes to me, yeah.

6 **MR. GONZÁLEZ:** And then can you do the outline,
7 Andrew.

8 **BY MR. GONZÁLEZ:**

9 **Q.** And do you see what's in yellow? That is the outline of a
10 shim that goes between the transmit blocks; correct?

11 **A.** So it's an outline of a shim, I guess, but what's another
12 side of it? I guess it's not here.

13 **Q.** It's the outline of a shim; correct?

14 **A.** Yeah.

15 **Q.** And so you would agree that none of the things that I just
16 mentioned are secret; right?

17 **A.** They're public as part of the patent.

18 **Q.** Let me ask you, sir, a couple of quick questions about
19 Exhibit 1248 --

20 **MR. GONZÁLEZ:** -- Your Honor, which I move into
21 evidence. There's no objection to it.

22 **THE COURT:** Is 1248 the patent?

23 **MR. GONZÁLEZ:** No, Your Honor. 1248 is an email.

24 **THE COURT:** I'm sorry. I'm confused. What is it
25 you're moving into evidence?

1 **MR. GONZÁLEZ:** Oh, I'm sorry. I do move the patent
2 into evidence, 1049.

3 **THE COURT:** Any objection?

4 **MR. JAFFE:** No objection, Your Honor.

5 **THE COURT:** Thank you. Received in evidence.

6 (Trial Exhibit 1049 received in evidence.)

7 **MR. GONZÁLEZ:** And then, Your Honor -- thank you for
8 clarifying -- I move into evidence Trial Exhibit 1248, which is
9 an email chain that the witness is involved in.

10 **THE COURT:** Any objection to 1248?

11 **MR. JAFFE:** No objections, Your Honor.

12 **THE COURT:** Thank you. Thank you. Received.

13 (Trial Exhibit 1248 received in evidence.)

14 (Photograph displayed.)

15 **MR. GONZÁLEZ:** Just briefly, Andrew, can you
16 please ...

17 **BY MR. GONZÁLEZ:**

18 **Q.** The top email is an internal Google email. And this is a
19 two-page chain.

20 **MR. GONZÁLEZ:** Andrew, can you go to the bottom of the
21 first page. Here we go.

22 **BY MR. GONZÁLEZ:**

23 **Q.** This is an email that you wrote at the bottom on
24 August 18th, 2016; right?

25 **A.** Yeah.

1 Q. And you say -- well, one of the persons you're writing to
2 is John. Do you see that, "John"?

3 A. I do.

4 Q. That's the CEO, Mr. Krafcik; right?

5 A. I believe so.

6 Q. All right. The jury met him yesterday.

7 And you say, "One of the significant effects of today's
8 Otto/Uber news is increased attrition risk for us"; right?

9 A. Yeah.

10 Q. And the news was that Otto was going to be acquired by
11 Uber; right?

12 A. Yeah.

13 Q. And then you wrote, "Uber has always been pretty
14 aggressive at recruiting, but one of the main barriers for
15 folks on our team was geography. Now that the core
16 self-driving effort will be in San Francisco and Palo Alto, the
17 competition for talent will get much more serious."

18 Do you see that?

19 A. I do.

20 Q. And what you meant there is that, before the acquisition,
21 if you wanted to work on Uber's self-driving program, most of
22 the people were located out of Pittsburgh; right?

23 A. That's what I meant.

24 Q. And there are a lot of people that just don't want to live
25 in Pittsburgh; right? Too cold?

1 **A.** Yeah, I guess part of the reasons.

2 **Q.** But your point was that now that Uber is involved here
3 locally, it's going to be harder for us to keep our people
4 because they might be more inclined to move to Uber; right?
5 That was your point?

6 **A.** That was one of the factors, yeah.

7 **Q.** And you were very concerned about that, weren't you?

8 **A.** Very concerned? I always care a lot about retaining our,
9 you know, talented people. So that was one of those points
10 where I think it kind of bubbled up in my mind.

11 **MR. GONZÁLEZ:** Andrew, next slide.

12 **BY MR. GONZÁLEZ:**

13 **Q.** And your email continues. You say, "I believe Anthony
14 will much more aggressively go after higher value targets on
15 our team"; right?

16 **A.** Yeah.

17 **Q.** "Anthony" is Mr. Levandowski?

18 **A.** Yeah.

19 **Q.** And you're alerting management, saying, hey, guys, we
20 might be losing more of our people; right?

21 **A.** I was worried that Anthony was going to reach out and
22 basically poach some of the best people, yeah.

23 **MR. GONZÁLEZ:** Next. Andrew, can you ...

24 **BY MR. GONZÁLEZ:**

25 **Q.** And then Joanne Chin responds to your email. She is the

1 head of HR at Waymo; correct?

2 **A.** That's right.

3 **Q.** And she responds and says, "Dmitri, your points align with
4 the conversations I had yesterday after the news, and I share
5 your concerns"; right?

6 **A.** Yeah, that's what it says.

7 **Q.** Sir, will you please look at Exhibit 1136.

8 **A.** I'm sorry. 1136? I'm not sure I have that.

9 **THE COURT:** I'm sorry. Is this one that's secret or
10 something?

11 **MR. GONZÁLEZ:** 1136.

12 **THE COURT:** Angie, they want you to turn off the -- I
13 don't understand. What do you want us to do?

14 **MR. GONZÁLEZ:** I don't need to do anything right now
15 other than have the witness look at 1136.

16 **THE COURT:** It's not on the screen yet; right?

17 **MR. GONZÁLEZ:** Correct.

18 **THE COURT:** Don't put it on any screens yet.

19 **MR. GONZÁLEZ:** I don't --

20 **BY MR. GONZÁLEZ:**

21 **Q.** You see 1136?

22 **A.** I do.

23 **Q.** Are you generally familiar with this document?

24 **A.** I'm not sure about the exact specific version, but it
25 looks familiar.

1 Q. All right. And if you look at page 10 of that document.
2 The top part. Sir, the top part.

3 A. Oh, top part. Okay.

4 Q. Got a bunch of boxes on there?

5 A. Yeah.

6 Q. Do you understand, generally speaking, that those are
7 different parts of the autonomous vehicle?

8 A. Well, it's the -- it describes the various aspects of the
9 technology that contribute to our system.

10 MR. GONZÁLEZ: All right. Your Honor, I'd like to
11 display just this one page, page 10 of Exhibit 1136.

12 THE COURT: Well, is that -- what do you say?

13 MR. JAFFE: Your Honor, we understood that they were
14 only going to be playing this on the screen and then ask him
15 questions about it. We need to look more specifically at this
16 page -- it looks like highly technical information -- before we
17 display this to the gallery.

18 MR. GONZÁLEZ: I can display it, Your Honor, to the
19 jurors for now. I don't think there's anything big that --

20 THE COURT: Well, is this in evidence yet?

21 MR. GONZÁLEZ: No, Your Honor. I move in page 10 of
22 Exhibit 1136, so I can display it to the jury.

23 THE COURT: All right. Is there any objection to that
24 much?

25 MR. JAFFE: No objection.

1 **THE COURT:** All right.

2 (Trial Exhibit 1136 - Page 10 received in evidence.)

3 **THE COURT:** Then the clerk will show that page only to
4 the jury box. You don't need to show it to me. Just inside
5 the jury box.

6 And if somebody out there manages to see it on the -- you
7 know, jump up and let me know that we're not doing it right.

8 Okay. Over there in the jury box, do you now have what --
9 is that over there yet, Angie?

10 Okay. You should be able to see it, but don't put it up
11 there and don't put it on my screen. Just put it in the jury
12 box. Is that possible?

13 Okay. I think we're doing it right. But you still have
14 it or not?

15 **MR. GONZÁLEZ:** No.

16 **THE COURT:** Okay. Now, it went off. Okay. We can't
17 do that. I'm sorry. That's beyond --

18 **MR. GONZÁLEZ:** Can we show it to the jurors and the
19 lawyers and Your Honor and the witness? Just black out --

20 **THE COURT:** Yeah, but then it will go up on this big
21 screen, I think, the way you lawyers have set this up.

22 **TECHNICIAN:** Your Honor, at this point, the projector
23 is still projecting. I think we can just block the projector
24 for now. The gallery line is blocked.

25 **MR. GONZÁLEZ:** Here you go. Problem solved.

1 Technology. Good. Can we try it again?

2 **THE COURT:** All right. Let's try it again.

3 **MR. GONZÁLEZ:** All right. Great. So the jurors have
4 it in front of them.

5 **BY MR. GONZÁLEZ:**

6 **Q.** So, sir, I don't want to spend a lot of time on this, but
7 you just basically said what I wanted to elicit. These are all
8 different components of a driverless vehicle; right?

9 **A.** That's correct.

10 **MR. GONZÁLEZ:** And, Andrew, can you -- Andrew, can you
11 bring up the top left?

12 **BY MR. GONZÁLEZ**

13 **Q.** And for the record, there has got to be maybe 15 different
14 boxes here of information, and they have smaller boxes inside;
15 right?

16 **A.** That's right.

17 **Q.** Okay. And I just want to call your attention to just one
18 box, which is the sensors on the upper left-hand side has four
19 different boxes inside. Do you see that?

20 **A.** I do.

21 **Q.** You understand that the eight trade secrets that we're
22 here to discuss all come from the top box of that box, which
23 says "Lasers." Do you see that?

24 **A.** I think that's right. Although, they might not be that
25 correct, complete mappings.

1 Q. Okay. You can't -- you don't see any other box on here
2 that the eight trade secrets come from, do you?

3 A. So, you know, for example, the one we talked about
4 earlier, the 111, I think, in my mind, the scope of that would
5 encompass more than just that box.

6 Q. Okay. Fair enough.

7 A. The learning is distributed throughout the entire system.

8 Q. All right. Fair enough. The other seven, you agree, come
9 just from that one box?

10 A. You know, this I'm less familiar with than the other
11 stuff, so I would have to follow it a little more carefully.

12 Q. All right, sir. Just a couple more questions.

13 One of the things that you do at Google and at Waymo, of
14 course, is you give evaluations, written evaluations to your
15 engineers; correct?

16 A. You mean performance evaluations?

17 Q. Yes.

18 A. Yeah.

19 Q. Can you identify a single evaluation -- oh, and, of
20 course, one of the things you say in your evaluations is you
21 commend people when they come up with a great idea; right?

22 A. So it's usually a little bit broader than that. Right.
23 In the performance evaluation, like, you don't list, you know,
24 very specific bright ideas that they had. You know, you give a
25 summarized overall performance of an individual.

1 Q. You're telling me that if somebody came up with a great
2 idea that was a breakthrough, what, you have a rule that you
3 don't mention that in written evaluations for that employee?

4 A. No, we have no such rule.

5 Q. Okay. Can you identify a single evaluation of any
6 employee where you or anybody at Google or Waymo said, "Great
7 job coming up with any of these trade secrets"?

8 I realize you may not have called them trade secrets. But
9 whatever they are, can you think of a single evaluation where
10 that feedback was given to an employee? Where somebody said,
11 "Great job coming up with this"? Anything?

12 A. I can't think of that specific, you know, congratulatory
13 note, specifically mapping to the entirety of these trade
14 secrets, no.

15 Q. Or any of the trade secrets?

16 A. You know, some components, maybe like the mapping of --
17 you know, the trade secret, no.

18 MR. GONZÁLEZ: All right. Thank you. That's all I
19 have.

20 THE COURT: Okay. Let's go to the redirect on the
21 public part.

22 MR. JAFFE: Thank you, Your Honor.

23 **REDIRECT EXAMINATION**

24 **BY MR. JAFFE:**

25 Q. Dr. Dolgov, let's pick up where Mr. González left off.

1 We were looking at page TX1136 -- excuse me, Exhibit
2 TX1136. And he asked you a question about these different
3 boxes that were on that page, on page 10. Do you remember
4 that?

5 A. I do.

6 Q. Okay. Can you go -- well, and the box he was asking you
7 about was the one labeled "sensors." Is that right?

8 A. Right.

9 Q. Okay. Can you go to page 17. There's a line in this
10 document, there's a category "Sensors." Do you see that?

11 A. I do.

12 Q. And then it says -- and I'm just going to read this out
13 loud because we're not displaying it publicly, but this is a --
14 it says: "Current assumption. A mixture of sensors are
15 essential for self-driving." Do you see that?

16 A. I do.

17 Q. Do you agree with that?

18 A. I do.

19 Q. Why?

20 A. So they -- each sensor has something that it is very good
21 at. And, you know, putting them together, it gives you, in my
22 opinion, the best system.

23 Q. But we heard from Mr. González or -- he was asking you,
24 you're saying it's only one box that -- why -- if they're
25 essential, why is there only one box?

1 **A.** Well, and I think measuring, you know, their impact of
2 something by counting boxes is not the metrics that I would
3 use, especially in a context of a slide that's describing, you
4 know, maybe some other set of boxes.

5 **Q.** And Mr. González was asking you who did what about when.
6 Let's just go back and talk about this in terms of your
7 experience.

8 In 2011, when you referred to for Trade Secret 111, who
9 was on the software team with you?

10 **A.** There were a number of people. You want to try me to
11 recall the names?

12 **Q.** Yeah, so any of the names that you recall regarding the
13 MBr project.

14 **A.** Michael Montonaro. Should I talk about the area or just
15 the names?

16 **Q.** The names.

17 **A.** Mike Montonaro, Jaijun Zhu, Nathaniel Fairfield, Chris
18 Urmson, myself. Maybe Hector Hee, but I'm not certain about
19 that one.

20 **Q.** And in terms of folks that worked on the MBr LiDAR design
21 on the hardware side, do you remember who was on the LiDAR team
22 at that time?

23 **A.** Pierre-Yves Droz, Anthony Levandowski. I think Andrew
24 Schultz probably contributed. I can try to recall other names,
25 but -- Gaetan. Can't remember the last name.

1 Q. Thank you.

2 All right. And Mr. González asked -- he put a patent in
3 front of you. Remember that?

4 A. I do.

5 Q. To be clear, was it -- were you looking at whether any of
6 that patent disclosed any of the trade secrets in this case?

7 A. No, I don't think that was the question that I got.

8 Q. And is it fair to say that -- well, let me ask it
9 differently.

10 With regard to Trade Secret 25 --

11 A. Yeah.

12 Q. -- who contributed to that, that -- what's described there
13 in that trade secret, the self-driving car specifications and
14 scenarios?

15 A. Many people across the team for, you know, a number of
16 years. So, again, I can't be identifying the specific people
17 just because the time is so long and the number of people is so
18 large, it's hard for me to do.

19 Q. And about how long did it take to come up with the data
20 that's included in that trade secret?

21 A. Years. You know, the experience is probably, you know,
22 from day one of the project.

23 Q. And when was that?

24 A. 2009.

25 MR. JAFFE: Thank you.

1 **THE COURT:** All right. Can we excuse the witness?

2 **MR. GONZÁLEZ:** Just one question. One question.

3 **RECROSS EXAMINATION**

4 **BY MR. GONZÁLEZ:**

5 **Q.** Sir, the first time that you ever saw a document that
6 identified those eight things as trade secrets is when I handed
7 you that document right in that chair; true?

8 **A.** We're getting into maybe some privileged conversations
9 that I had with in-house attorneys where I might have seen it.

10 **Q.** Okay. Let me rephrase it.

11 Before this lawsuit was filed, you had never seen any
12 document that identified any of these things as trade secrets;
13 true?

14 **A.** True.

15 **MR. GONZÁLEZ:** Thank you.

16 **THE COURT:** All right. May the witness -- no, we have
17 to have the private session; right?

18 **MR. JAFFE:** That's correct, Your Honor.

19 **THE COURT:** All right. So tell me how long that's
20 going to last. Just on your direct, how long will that be?

21 **MR. JAFFE:** I should be about 15 minutes or less.

22 **THE COURT:** All right. Here's what we're going to do.
23 I think it will be more efficient. Members of the public, I'm
24 going to excuse you now. We're going to do the private part of
25 this witness. And then at the end of that, I'm going to give

1 the jury a 15-minute break. So effectively what I'm doing is
2 giving you maybe like a 40 or 50-minute break, would be my
3 estimate. So everyone -- members of the public and all people
4 not cleared under the protective order need to leave. Thank
5 you.

6 While everyone is leaving, if anyone can hear me in the
7 overflow room, there's been an error. So come see me so we
8 don't have this thing broadcast. And, also, if anybody in the
9 rest of the building --

10 (Laughter)

11 **THE COURT:** -- can hear me, let me know because I
12 don't trust this system that we have 100 percent, even though I
13 do trust my courtroom deputy.

14 (Sealed proceedings Page 460, Line 1, through Page
15 474, Line 7.)

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(Sealed proceedings concluded.)

THE COURT: Just a minute.

Just to give the jury a heads-up, who's going to be our
next witness?

MR. LYONS: Gary Brown.

THE COURT: All right. Should that be done in public?

MR. LYONS: Yes, Your Honor.

THE COURT: All right. We'll take our 15-minute break
now. Remember my admonition.

Thank you, ladies and gentlemen.

THE CLERK: All rise for the jury.

(Jury out at 9:08 a.m.)

THE COURT: Thank you. Be seated. Our witness can
step down. Clear away the witness bench so we'll have a fresh
start.

I have just a comment for you. It's up to you how you'll
make your record, but, Mr. Jaffe, there were many times there
where you used the present tense, "How does Waymo do its LiDAR

1 now?" It may become important in the case how Waymo did it at
2 the time Levandowski was there. And those could be entirely
3 different things. I've seen this problem come up in other
4 trials, and the lawyers seem to have a fixation in asking the
5 present tense.

6 It's up to you how you want to make your record, but if it
7 turns out that it's important, the verb tense, I want both
8 sides to know I'm putting you on notice, it sometimes is
9 important, and the other side might call you on it or the Court
10 of Appeals. So take that to heart.

11 We'll take our break now.

12 **MR. JAFFE:** Thank you.

13 **THE COURT:** Yes, sir.

14 **MR. VERHOEVEN:** I had one quick thing. You'll recall
15 yesterday, after Mr. Carmody's direct, I raised the issue of
16 the distinction between patents and trade secrets.

17 During the cross of this latest witness, phrases were used
18 like "great idea," "new discovery," "hallelujah moment" in
19 talking about the trade secrets, Your Honor.

20 And then, of course, the patent was shown as well. And I
21 think that's further perpetuating a confusion -- a potential
22 confusion with the jury.

23 **THE COURT:** I'm hoping that I can come back on the
24 bench and -- since you lawyers have failed me again, I'm going
25 to give my own instruction on the difference.

1 **MR. VERHOEVEN:** Thank you very much, Your Honor.

2 **THE COURT:** All right. Thank you.

3 **MR. JUDAH:** Your Honor, there's one other point. We
4 have the revised highlighted versions. I think that they're
5 legible for the designations. If I could pass these up, and
6 you can review them when you have an opportunity.

7 **THE COURT:** This is on Bares?

8 **MR. JUDAH:** This is Bares, yes. The completeness with
9 Bares, and then also Brian McClendon.

10 (Recess taken at 9:10 a.m.)

11 (Proceedings resumed at 9:25 a.m.)

12 (Discussion off the record.)

13 **THE COURT:** All right. Everyone be seated.

14 **MR. VERHOEVEN:** I believe that it was given to
15 Mr. Eiseman, but we'll double-check and confirm.

16 **THE COURT:** Well, no, but somebody gave something to
17 Angie, I thought, at the very end. Who was that?

18 **MR. VERHOEVEN:** That was Mr. Judah, Mr. James Judah,
19 and that was the sealed portions for Your Honor's review. Did
20 you get that, Your Honor?

21 **THE COURT:** I never got it.

22 **MR. VERHOEVEN:** Oh.

23 **THE COURT:** So it never got past there. So you all
24 figure it out. I can't solve every problem.

25 All right. Let's bring in the jury.

1 All right. I found it. It was my fault, I guess.

2 **MR. VERHOEVEN:** You have it, Your Honor?

3 **THE COURT:** Yes, I do.

4 **MR. VERHOEVEN:** Okay. Thank you.

5 **THE CLERK:** All rise for the jury.

6 (Jury enters at 9:27 a.m.)

7 **THE COURT:** Welcome back. Please be seated.

8 Before the next witness, your judge, meaning me, wants to
9 give you an explanation of a couple of things in this case that
10 I think will mean more to you now that you've heard some of the
11 evidence than if I had given this straight off the bat.

12 Now, at the end of the case, I will give you very
13 detailed, even in writing, instructions about the law and what
14 needs to be proven.

15 So what I'm going to do now is a little bit better than
16 quick and dirty, but it is a preliminary instruction about the
17 difference between patents on the one hand and trade secrets on
18 the other. Okay? Because this has already come up a couple of
19 times.

20 Remember, our case involves trade secrets; it does not
21 involve patents. So, nevertheless, comparisons have been made.
22 So we need to understand that.

23 So let me start first with patents. A patent is issued by
24 the federal government. It's right there in the Constitution,
25 actually. If you go back and look at the Constitution, patents

1 are referred to there.

2 And a patent is a grant by the United States of America to
3 an inventor to have the exclusive use of an invention for --
4 I've lost track. They changed this. Is it 21 years now? 21
5 years. All right. Used to be 17, but they changed it to 21.

6 So, to take an example, someone invents a particular
7 widget. They apply for a patent. It's all done in secret.
8 The Patent Office looks at it and decides whether or not it is
9 a new invention. It has to be something new, not in the prior
10 art. It has to be something new and also useful.

11 So if the patent office thinks that it meets those
12 qualifications, then they issue the patent. And the patent --
13 the PTO, the U.S. Patent and Trademark Office issues the
14 patent. Sometimes we have litigation over the validity of
15 those patents, but that's a different point.

16 So then the owner of the patent has the exclusive right to
17 use and -- make, sell, or use that widget in the United States.
18 This is very important. They have the exclusive right to do
19 it. No one else can do it without their okay.

20 So even if one of you decided, if somebody else invented
21 the same thing on their own, in their own little workshop, and
22 thought they were the inventor, no, they lose out to the patent
23 unless they get an earlier patent. But it's whoever invents it
24 first winds up getting the patent, and then everyone else has
25 got to get a license from them or they just can't use it.

1 All right? So that's the patent.

2 And, by the way, once the patent is issued, it's public
3 for all the world to see. So part of the tradeoff is that, in
4 exchange for telling the world about this patent and this
5 invention, the public gets to see it, and then you -- and then
6 commerce and innovation can build on that information. But in
7 exchange for that disclosure, the inventor gets this 21-year
8 exclusive right.

9 Now, that's kind of what a patent is. Let me see if
10 there's anything else I wanted to cover.

11 All right. So a trade secret is something that is
12 different in many respects. I'll say how it's similar.

13 This term you've heard, IP -- intellectual property, IP --
14 usually is used to mean both patents and trade secrets and
15 copyrights, trademarks, lots of things. It's a very broad
16 term. But once you get down to comparing patents and trade
17 secrets, they are different in many important ways.

18 A trade secret is something that you don't apply for some
19 patent somewhere. No government agency issues a trade secret.
20 Instead, it's something that the -- typically, a company or a
21 small business, or a big business, would come up with and
22 develop their own way of doing something, and they kept it
23 secret. And that has value -- economic value because it is
24 secret and has value to them. And they take reasonable efforts
25 to keep it a secret.

1 So that's what a trade secret is. Now, if it's
2 generally -- it always concerns information. Information. And
3 if that information, though, is already known generally to the
4 public, then it can't qualify. It cannot qualify as a trade
5 secret because it's already generally known.

6 And so that -- so part of what Waymo has got to prove here
7 is its alleged trade secrets were not generally known. It
8 would be one of the elements that it needs to prove.

9 Now, another important way that the trade secrets are
10 different is that -- remember I said for patents the owner gets
11 the exclusive right to use, make, or sell the widget, and
12 nobody else can do it without their permission.

13 But where trade secrets are concerned, if you have one
14 company over here and one company here, and one of them
15 develops its own trade secret, the other -- the other company
16 is entitled to develop its trade secrets. And they may or may
17 not be the same thing. But if they do happen to be the same
18 thing, that's okay.

19 What you can't do, though, is steal somebody else's trade
20 secrets. That's a no-no. You can't do that. But if you
21 independently develop your own trade secrets, the fact that
22 somebody else has got a trade secret that looks just like it or
23 close to it, too bad. You can't sue them over that. You can
24 only sue over stealing or misappropriating somebody else's
25 trade secrets.

1 So, remember, I said that for patents you get the
2 nationwide exclusive right to make, use, or sell. That doesn't
3 apply at all in trade secrets. Somebody else has the right at
4 any time to develop their own trade secrets.

5 Now, they have to legitimately develop their own. As I
6 say, you can't misappropriate somebody else's trade secret.
7 But every company -- every company has the right to develop
8 their own and then use it. And it doesn't matter if it's the
9 same as somebody else's trade secret.

10 So at the end of the case, I'm going to give you more
11 detailed instructions. But, for present purposes, I wanted to
12 try to explain to you the difference between patents on the one
13 hand and trade secrets on the other.

14 Okay. One last thing. One of you told my clerk that the
15 last witness on the stand, you could not hear. I totally
16 understand because there were a few moments when I found it
17 hard to hear. And what I want you to do, if you find yourself
18 in that position again, is raise your hand and say, "I can't
19 hear the witness." I want you to -- you know, this entire
20 exercise is for you. So you have to raise your hand and let us
21 know you can't see something or you can't hear something. So
22 please take that into account.

23 All right. Next witness, please.

24 **MR. LYONS:** Thank you, Your Honor. The plaintiff
25 calls Gary Brown.

1 **THE COURT:** Gary Brown.

2 **THE CLERK:** Will the witness please approach the
3 witness stand.

4 **THE COURT:** Okay. Mr. Brown, welcome. And please
5 raise your right hand and take an oath to tell the truth.

6 **GARY THOMAS BROWN,**
7 called as a witness for the Plaintiff, having been duly sworn,
8 testified as follows:

9 **THE COURT:** Okay. Welcome again, Mr. Brown. Please
10 have a seat.

11 See how my microphone moves around? Yours does too. It
12 has to be close enough to catch your voice so all those people
13 back there can hear you.

14 Say your name, please.

15 **THE WITNESS:** Gary Thomas Brown.

16 **THE COURT:** All right. That's good, I think.

17 Counsel, remind the jury who you are and then please
18 proceed.

19 **MR. LYONS:** Good morning, ladies and gentlemen. My
20 name is Duane Lyons.

21 **DIRECT EXAMINATION**

22 **BY MR. LYONS:**

23 **Q.** Good morning, Mr. Brown.

24 **A.** Good morning.

25 **Q.** Where are you employed?

1 A. Google.

2 Q. How long have you worked at Google?

3 A. Since August 2013.

4 Q. Could you tell us briefly about your educational
5 background.

6 A. In May 2011, I received a bachelor's in cybersecurity and
7 a master's in enterprise computing from the Stevens Institute
8 of Technology in Hoboken, New Jersey.

9 Q. What did you do after you received your degrees from
10 Stevens?

11 A. I worked for the Federal Reserve Bank of New York as an
12 intrusion analyst on their national incident response team.

13 Q. What is an intrusion analyst?

14 A. We would investigate suspected attacks on bank computers
15 and networks to determine whether they were real or not.

16 Q. How long did you work at the Federal Reserve?

17 A. A little over two years.

18 Q. And why did you leave?

19 A. I got an offer from Google.

20 Q. So you've been at Google now for a little over four years;
21 is that correct?

22 A. That is correct.

23 Q. And what do you do for Google?

24 A. I'm a forensic analyst investigating security incidents.

25 Q. And what are your responsibilities as a forensic analyst?

1 A. We investigate security incidents.

2 Q. Do you know who Anthony Levandowski is?

3 A. I do.

4 Q. And were you part of a forensic investigation conducted by
5 Google into his activities on the network at Google?

6 A. Yes.

7 Q. Are you familiar with something called the SVN server?

8 A. I am.

9 Q. What is the SVN server?

10 A. It's a repository of design files that pertain to
11 self-driving cars.

12 Q. Did you investigate suspected activity on the SVN server
13 on December 11, 2015, at approximately 6:40 p.m.?

14 A. Yes.

15 Q. And what tools did you use as part of your investigation
16 of activity on the SVN server that day?

17 A. I reviewed several log sources that pertained to hosts and
18 networks of Google's.

19 Q. Speaking about the logs, do you recall the logs that you
20 reviewed?

21 A. Yes. There were DNS logs, DHCP logs, SVN logs, Google
22 network flow logs, Bit9 logs, and records for Armada and GRR.

23 Q. Did you also review records from Google Drive?

24 A. Yes.

25 Q. Now, with regard to these logs, have you used them in

1 connection with your duties as a forensic analyst at Google?

2 A. I have.

3 Q. And what type of information is generally reflected on
4 these types of logs?

5 A. Information pertaining to the systems on which they're
6 recorded.

7 Q. Do these logs reflect date, time, and that type of
8 information?

9 A. They do.

10 Q. And how is the date, time, and information that's on these
11 logs generated?

12 A. The system on which the logs are recorded generates them.

13 Q. Have you found the information to be reliable and
14 accurate?

15 A. I have.

16 Q. Is the information that appears on these logs recorded at
17 or near the time of the event that the log actually reflects?

18 A. Yes.

19 Q. And was it the practice at Google to have these logs
20 generated in the course of regularly conducted business
21 activity?

22 A. It is.

23 Q. And is it the regular practice at Google to utilize these
24 types of logs?

25 A. It is.

1 Q. Now, you said you were investigating activity on the SVN
2 server. Do you recall that?

3 A. Yes.

4 Q. Does that server have a website address?

5 A. The SVN server was audited at yakshaves.com.

6 Q. And did you make an effort to determine whether the
7 computer accessed the SVN server located yakshaves.com on
8 December 11, 2015, at approximately 6:40 p.m.?

9 A. Yes.

10 Q. What did you do?

11 A. I reviewed DNS logs for Google's network to determine what
12 machines were making lookups of that domain.

13 Q. And when you reviewed the DNS logs, did you determine how
14 many computers accessed the SVN server on December 11th at
15 approximately 6:40 p.m.?

16 A. There was one.

17 MR. LYONS: Can I have Exhibit 4879 on the screen for
18 the witness, please.

19 BY MR. LYONS:

20 Q. Do you recognize what's on the screen as Exhibit 4879?

21 A. Yes.

22 Q. And what it is?

23 A. This is a DNS log for the computer that made the lookup to
24 yakshaves.com.

25 MR. LYONS: Your Honor, move the admission of 4879 and

1 ask that it be published to the jury.

2 **MR. GONZÁLEZ:** No objection, Your Honor.

3 **THE COURT:** Received.

4 (Trial Exhibit 4879 received in evidence.)

5 (Document displayed.)

6 **BY MR. LYONS:**

7 **Q.** So this is a DNS log. Did you prepare a demonstrative
8 regarding this log activity that you believed might be helpful
9 in explaining your testimony to the jury?

10 **A.** Yes.

11 **MR. LYONS:** Can I have the demonstrative 4-4 before
12 the witness and the jury. It's a demonstrative, so no
13 objection.

14 **BY MR. LYONS:**

15 **Q.** So is this the demonstrative that you prepared?

16 **A.** Yes.

17 **Q.** And does this reflect a particular line from the DNS log
18 activity that you reviewed on that day?

19 **A.** Yes, 0745.

20 **Q.** With the regard to the column that says "Query," it says
21 "yakshaves.com." What is that?

22 **A.** That's the domain at which the SVN server resided.

23 **Q.** Are you familiar with the term "IP address"?

24 **A.** Yes.

25 **Q.** What is an IP address?

1 **A.** It's a set of numbers that help computers communicate on
2 the internet.

3 **Q.** Is that an IP address associated with yakshaves.com?

4 **A.** Yes. It's 108.59.84.174.

5 **Q.** Now, looking at the DNS log, were you able to identify the
6 IP address of the computer that was used to access
7 yakshaves.com at that time?

8 **A.** Yes. A machine on Google's network with the IP address
9 100.98.165.23 had made the request.

10 **Q.** Once you had the IP address for the computer, what
11 information did you need to determine whose computer it was?

12 **A.** The machine's MAC address.

13 **Q.** And did you make an effort to obtain the MAC address?

14 **A.** Yes, I reviewed DHCP logs.

15 **Q.** Let's start with, what is a MAC address?

16 **A.** It's a unique hardware identifier like a serial number for
17 a device that connects to networks.

18 **Q.** Okay. You mentioned a DHCP log. How do you use a DHCP
19 log to identify the MAC address?

20 **A.** DHCP logs show the hardware identifiers associated with IP
21 addresses for a period of time.

22 **MR. LYONS:** Can I have Exhibit 4850 on the screen for
23 the witness.

24 Your Honor, if I hadn't done so, I'd like to move 4879, if
25 I haven't done that already.

1 **THE COURT:** 4879 is in evidence.

2 **BY MR. LYONS:**

3 **Q.** Do you have Exhibit 4850 before you on the screen?

4 **A.** Yes.

5 **Q.** Okay. And do you recognize that?

6 **A.** I do.

7 **Q.** What is it?

8 **A.** This is a DHCP log for records pertaining to the IP
9 address that had made that lookup to yakshakes.com on
10 December 11, 2015.

11 **MR. LYONS:** Move admission of Plaintiff's
12 Exhibit 4850.

13 **MR. GONZÁLEZ:** No objection, Your Honor.

14 **THE COURT:** Thank you. Received.

15 (Trial Exhibit 4850 received in evidence.)

16 (Document displayed.)

17 **BY MR. LYONS:**

18 **Q.** Now, looking at 4850, you see there's a bunch of numbers
19 here. Looking at column C, what's in column C?

20 **A.** That's the IP address that we had previously shown making
21 the DNS lookup for yakshaves.com.

22 **Q.** And what's in column B?

23 **A.** The MAC address for unique hardware identifier associated
24 with that IP at that time.

25 **Q.** And there's also a column E that says "Host Name." Do you

1 see that?

2 A. Yes.

3 Q. What is that?

4 A. That is the name that that machine was advertising to the
5 network at that time.

6 Q. At this point in time, did you have an idea whose computer
7 this was?

8 A. I did.

9 Q. And whose computer did you believe it to be at the time?

10 A. Anthony Levandowski's.

11 Q. Now, did you also prepare for your testimony today a
12 demonstrative regarding your investigation?

13 A. Yes.

14 Q. Would that demonstrative assist you in explaining your
15 testimony to the jury?

16 A. It would.

17 MR. LYONS: Your Honor, may I please have DX4-1 before
18 the witness.

19 BY MR. LYONS:

20 Q. Do you recognize that?

21 A. I do.

22 Q. Is that the demonstrative you prepared?

23 A. Yes.

24 MR. LYONS: Can I have that published, Your Honor?

25 THE COURT: Sure.

(Document displayed.)

BY MR. LYONS:

Q. So could you explain what's shown --

THE COURT: So I better explain to the jury something, though. These things -- they call demonstratives -- will not be in evidence in the jury room. So if there's something on there that you want to remember, you've got to take a note of it because this will not be in the jury room.

It's not evidence. It's a shorthand way to demonstrate something that we allow in trials. But it's not evidence itself. So if you want to make a note of anything, make a note. But this won't be in the jury room.

Thank you.

BY MR. LYONS:

Q. So, Mr. Brown, is this a demonstrative that you prepared regarding your investigation for activity between December 11th and 18th of 2015?

A. Yes.

Q. And in the first slide on the left-hand side, you see there's a couple of computers and some information on there. What's on there?

A. This shows that for December 11th, 2015, I had queried lookups of the SVN server at yakshaves.com and had identified an IP address for a machine on Google's network that was making that request. And then reviewing DHCP logs, I was able to pair

1 that IP to the device that was making that request at that
2 time.

3 Q. Did you do anything else to confirm that the computer
4 belonged to Anthony Levandowski?

5 A. I did.

6 Q. What did you do?

7 A. I queried the MAC address in Armada.

8 Q. What is Armada?

9 A. Armada is an internal system that helps track inventory.

10 Q. And have you used Armada to look up MAC addresses in the
11 past?

12 A. I have.

13 Q. And have you found the information in Armada to be
14 reliable and accurate?

15 A. Yes.

16 MR. LYONS: Your Honor, may I have Exhibit 4840
17 admitted at this time?

18 THE COURT: 4840. Any objection?

19 MR. GONZÁLEZ: No objection.

20 THE COURT: Received.

21 (Trial Exhibit 4840 received in evidence.)

22 (Document displayed.)

23 BY MR. LYONS:

24 Q. Now, what are we looking at in Exhibit 4840?

25 A. This is an Armada report for a laptop issued to Anthony

1 Levandowski.

2 Q. And if we go to two lines up from the bottom of the
3 screen, you see it says "Armada:user_primary." Do you see
4 that?

5 A. Yes.

6 Q. What -- what is that information?

7 A. This shows that the primary user of that device was
8 anthonyl@google.com, which is Anthony Levandowski's user name.

9 MR. LYONS: Can we go to demonstrative 4-2, please.

10 BY MR. LYONS

11 Q. And we filled in your chart a little bit further. What's
12 depicted on this portion of your chart?

13 A. Armed with the MAC address for the machine that had made
14 the lookup to yakshaves.com, I then searched that MAC address
15 in Armada and confirmed that the device making the request was
16 issued to Anthony Levandowski.

17 Q. What did you do next, after you determined that it was
18 Mr. Levandowski's computer that accessed the SVN server on that
19 day?

20 A. I reviewed Google network flow logs as well as the SVN
21 server log to determine the extent of activity.

22 Q. You mentioned the -- the flow logs. What is a flow log?

23 A. A flow log is a record of network communications between
24 two devices.

25 MR. LYONS: Can I have Exhibit 4852, please, admitted?

1 **THE COURT:** Any objection?

2 **MR. GONZÁLEZ:** No objection, Your Honor.

3 **THE COURT:** Thank you. Received.

4 (Trial Exhibit 4852 received in evidence.)

5 (Document displayed.)

6 **BY MR. LYONS:**

7 **Q.** We have 4852 on the screen, and they're a bunch of numbers
8 here. Let's start just with Column A. What is in Column A?

9 **A.** The time of the connection.

10 **Q.** And then in Column C, what's in Column C?

11 **A.** The IP address of the device initiating the connection.

12 **Q.** And what's in Column E?

13 **A.** The recipient or destination device.

14 **Q.** Okay. In this case, in Column C on line 2 -- I think it's
15 the first one there -- what computer is that?

16 **A.** That's Anthony Levandowski's laptop on Google's network.

17 **Q.** And then it's making a request for a device in Column E.
18 What is in Column E?

19 **A.** That is the IP address of the SVN server.

20 **Q.** If we go down one line, you'll see that the information in
21 column C and E are switched. What is indicated by that?

22 **A.** Typically a response. In Column 2, the Levandowski laptop
23 was making a request to the SVN server for a file. And in
24 line 3, the server is responding in kind with that file.

25 **Q.** Now --

1 **A.** And this pattern goes on for a period of roughly 43
2 minutes.

3 **Q.** And that's what's reflected in the rest of the log until
4 the end of it?

5 **A.** Yes.

6 **Q.** How much data was transferred during that time period?

7 **A.** Roughly 10 gigabytes.

8 **Q.** Did you make any effort to determine the exact number of
9 files that were downloaded during that session?

10 **A.** Yes, through review of the SVN log.

11 **MR. LYONS:** Can I have Exhibit 4881 marked for
12 identification.

13 **THE COURT:** Do you want us to mark it? I thought
14 these were premarked.

15 **MR. LYONS:** No, I'm sorry. Premarked, Your Honor. I
16 apologize. 4881 is before the witness, Your Honor.

17 **THE COURT:** All right. Did you want to move it in
18 evidence?

19 **MR. LYONS:** Yes, I'm going to move it at this time.

20 **THE COURT:** All right. Any objection?

21 **MR. GONZÁLEZ:** No objection.

22 **THE COURT:** Received.

23 (Trial Exhibit 4881 received in evidence.)

24 **BY MR. LYONS:**

25 **Q.** What's depicted on 4881?

1 A. There is activity for anthony1@google.com for activity on
2 the SVN server on December 11th, 2015.

3 Q. Okay. And were you able to determine the number of files
4 downloaded by reviewing this particular log?

5 A. Yes. I counted 14,107 files.

6 Q. And what was the -- the gigabyte size for that download?

7 A. It constituted 9.74 gigabytes.

8 MR. LYONS: Can I go to demonstrative 4-3.

9 BY MR. LYONS

10 Q. Now, what's depicted on the third slide on this
11 demonstrative?

12 A. Through a review of Google network flow records and the
13 SVN log, I determined that 14,107 files, constituting 9.74
14 gigabytes, had been downloaded from the SVN server to Anthony
15 Levandowski's laptop.

16 Q. Now, knowing Mr. Levandowski had downloaded those files,
17 did you do anything to determine what happened to those files?

18 A. Yes. I reviewed Bit9 logs to determine if the files had
19 made their way off the machine.

20 Q. What is Bit9?

21 A. Bit9 is an application that runs on our Windows machines
22 that records, among other things, attachments and detachments
23 of removable drives, like thumb drives.

24 MR. LYONS: At this time, I'd move admission of
25 Exhibit 4846.

1 **MR. GONZÁLEZ:** No objection, Your Honor.

2 **THE COURT:** Received.

3 (Trial Exhibit 4846 received in evidence.)

4 (Document displayed.)

5 **BY MR. LYONS:**

6 **Q.** Now what is Exhibit 4846?

7 **A.** This is a Bit9 log for Anthony Levandowski's laptop for
8 December 14th, 2015.

9 **Q.** And did you prepare a demonstrative to assist you in
10 describing your testimony about the use of the Bit9 logs?

11 **A.** Yes.

12 **MR. LYONS:** Can I have 4-5 before the witness, please.

13 **BY MR. LYONS:**

14 **Q.** Looking at -- just for the record, this is your analysis
15 of Exhibit 4846, but in particular, Column Rows G and 8;
16 correct?

17 **A.** Rows 3 and 8, that's correct.

18 **Q.** Now, with regards to the information in Row 3, there are
19 three areas that are highlighted in red, and the first says,
20 "Device TS-RDF5 transcend." Do you see that?

21 **A.** I do.

22 **Q.** What do you recognize that to be?

23 **A.** This is a make and model of a device. In this case, a USB
24 memory card reader.

25 **Q.** What is a memory card reader?

1 A. It's an adapter for a memory card.

2 Q. And what's a memory card?

3 A. A small electronic device that stores information,
4 commonly found in cameras and other small electronics.

5 Q. And can you put the memory card inside the card reader?

6 A. Yes. The card would go into a reader, and that would
7 allow data to be transferred between a computer and the memory
8 card.

9 Q. Now, in the second line, there's something that says
10 "device attached." Do you see that?

11 A. Yes.

12 Q. What does that refer to?

13 A. It being plugged in.

14 Q. And then the third line, there's a date and time stamp.

15 A. Yes.

16 Q. What is that?

17 A. That is December 14th, 2015, at 5:37 p.m. UTC, which is
18 the same as GMT, or Greenwich Mean Time, and translates to 9:37
19 in the morning, California time.

20 Q. So putting it all together, what did that particular line
21 indicate to you?

22 A. On the morning of December 14th, 2015, a memory card
23 reader was attached to Anthony Levandowski's laptop.

24 Q. And going down --

25 **THE COURT:** Can I interrupt for one second.

1 When you say "Anthony Levandowski's laptop," do you mean
2 one issued by the company to him or do you mean his own
3 personal machine? It's unclear what you mean.

4 **THE WITNESS:** A -- the device that had been issued by
5 the company to him.

6 **THE COURT:** All right. Thank you.

7 **BY MR. LYONS:**

8 **Q.** Looking down at Row 8, you'll see the same three red
9 line -- or red indicators, and the second line says "device
10 detached." What does that refer to?

11 **A.** It being unplugged.

12 **MR. LYONS:** Can we go to demonstrative 4-6.

13 **BY MR. LYONS:**

14 **Q.** And what's depicted in this portion of your demonstrative?

15 **A.** On December 14th, three days after the download from the
16 SVN server, a USB card reader, presumably with card attached,
17 was plugged into Anthony Levandowski's laptop for a period of
18 roughly eight hours before being disconnected at 6:14 p.m.
19 California time.

20 **Q.** Now, as part of your investigation, did you make any
21 efforts to determine what happened to this computer?

22 **A.** I did.

23 **Q.** What did you do?

24 **A.** I reviewed GRR records for the device.

25 **Q.** How do you spell that?

1 A. G-R-R.

2 Q. And what does "GRR" stand for?

3 A. I've heard it referred to as Google rapid response or GRR
4 response rig, but we just call it GRR.

5 Q. And what does it do?

6 A. It's a remote forensics tool that, when connected to the
7 Internet, will phone home to a server every 15 minutes to
8 receive instructions.

9 MR. LYONS: Can I have Exhibit 4842 in evidence?

10 MR. GONZÁLEZ: No objection, Your Honor.

11 THE COURT: Thank you. Received.

12 (Trial Exhibit 4842 received in evidence.)

13 (Document displayed.)

14 BY MR. LYONS:

15 Q. Could you just describe how you use those -- excuse me.
16 Let me stop for a second.

17 Is this the GRR record that you were referring to?

18 A. Yes.

19 Q. Okay. Could you tell the jury how you use the GRR record
20 to determine what happened to the computer.

21 A. GRR records information about the machines that phone
22 home. In this case, the time that the operating system was
23 installed, which in this case is December 18th, 2015.

24 Another piece of information that it records is the
25 operating system running. And what's curious about this is on

1 December 18th, 2015, the machine was reinstalled as a Linux
2 device, and it had previously been a Windows device.

3 Q. What was significant about the reinstall of this device
4 with a Linux operating system?

5 A. The operating system that had been on it and all artifacts
6 on it would have been erased.

7 Q. And did you prepare a demonstrative to describe this?

8 A. Yes.

9 MR. LYONS: And can we go to 4-8.

10 BY MR. LYONS:

11 Q. So now, what -- what's depicted in this portion of your
12 demonstrative?

13 A. On December 18th, roughly four days after the connection
14 of the USB card reader, the device was erased and reimaged as a
15 different operating system.

16 Q. What happened to the data that was on the device?

17 A. It's gone.

18 Q. Now, for the last 15 minutes or so, you've been describing
19 certain information that you obtained from this computer. How
20 is it that you were able to obtain that data since the computer
21 had been erased?

22 A. When these machines are connected to the Internet, they
23 send their logs back to Google's infrastructure for events
24 where the device may become unrecoverable.

25 Q. Did you document, in your investigative findings, in

1 something called a machine forensics log?

2 **A.** Yes.

3 **MR. LYONS:** And move admission of Exhibit 2260.

4 **MR. GONZÁLEZ:** No objection, Your Honor.

5 **THE COURT:** Okay. Did you say 2260?

6 **MR. LYONS:** Yes.

7 **THE COURT:** All right. Thank you. In evidence.

8 (Trial Exhibit 2260 received in evidence.)

9 (Document displayed.)

10 **BY MR. LYONS:**

11 **Q.** Now, one last exhibit, Mr. Brown. Did you do any analysis
12 of any other file transfers by Mr. Levandowski?

13 **A.** Yes.

14 **Q.** Okay. Specifically, did you conduct an investigation into
15 his access of Google Drive?

16 **A.** I did.

17 **Q.** And what is Google Drive?

18 **A.** Google Drive is cloud storage for files and documents.

19 **MR. LYONS:** Can I have Exhibit 5031 -- let's -- I'll
20 move the admission of 5031 at this time.

21 **MR. GONZÁLEZ:** No objection.

22 **THE COURT:** Received.

23 (Trial Exhibit 5031 received in evidence.)

24 (Document displayed.)

1 BY MR. LYONS:

2 Q. Can you describe what's depicted in Exhibit 5031?

3 A. This is not 5031.

4 (Document displayed.)

5 THE COURT: Sorry. What's happening here?

6 MR. LYONS: I, apparently, have the wrong exhibit.

7 THE WITNESS: Oh, the next tab, please.

8 BY MR. LYONS:

9 Q. I'm sorry. Is that the right exhibit?

10 A. Yes.

11 Q. Okay. What is it?

12 THE COURT: What exhibit number is that one now?

13 MR. LYONS: 5031.

14 THE COURT: All right.

15 MR. LYONS: I believe the computer operator put the
16 wrong exhibit up.

17 THE COURT: We're -- we're good. Go ahead.

18 THE WITNESS: This is Google Drive download activity
19 for Anthony Levandowski for the time period October 14th, 2015
20 through his departure.

21 BY MR. LYONS:

22 Q. Did you prepare a demonstrative reflecting activity on --
23 in January 2016?

24 A. Yes.

25 MR. LYONS: Can I have 4-7 on the screen.

1 BY MR. LYONS:

2 Q. And what's depicted in this demonstrative?

3 A. Downloads by Anthony Levandowski from Google Drive for
4 January 4th, 2016, as well as January 11th, 2016.

5 MR. LYONS: I have nothing further, Your Honor. Pass
6 the witness.

7 THE COURT: Thank you.

8 CROSS-EXAMINATION

9 BY MR. GONZÁLEZ:

10 Q. Sir, you were not the only person working on the
11 examination of Mr. Levandowski's computers, were you?

12 A. No.

13 Q. For example, there's a person named Kristinn Gudjonsson
14 that also worked on it; correct?

15 A. That is correct.

16 Q. And I -- I don't think you were asked when you did this
17 work, so I want to ask you some questions about that.

18 You understand that Mr. Gudjonsson's work began in
19 February of 2016, correct?

20 A. That sounds correct.

21 Q. Literally the week after Mr. Levandowski left, you all
22 started examining his computers; right?

23 A. I did not, but I believe it was looked at.

24 Q. And you started the very next month in March; right?

25 A. That is incorrect.

1 **MR. GONZÁLEZ:** Andrew, can we play 338, line 7 to 9.

2 (Counsel confer off record.)

3 **MR. GONZÁLEZ:** Can we play it, Your Honor?

4 **THE COURT:** Is this from the deposition?

5 **MR. GONZÁLEZ:** Yes, Your Honor.

6 **THE COURT:** Before, let me tell the jury. Sometimes
7 they videotape these depositions. You've already seen some
8 where they read from a transcript. This one we're going to get
9 to see in video form, but it -- the same principles and rules
10 apply. This is prior sworn testimony of the same witness.

11 **MR. LYONS:** Can I just have a second, Your Honor, with
12 counsel? I don't have the depo transcript. It's not in the
13 binder.

14 **MR. GONZÁLEZ:** It is in your binder.

15 **MR. LYONS:** Can I have the date, Counsel?

16 **MR. GONZÁLEZ:** Can we play it now, Your Honor?

17 **THE COURT:** Please roll the tape.

18 (Videotaped deposition played but not reported.)

19 **MR. GONZÁLEZ:** All right. And the deposition, for the
20 record, Your Honor, was on September 6th, 2017.

21 **BY MR. GONZÁLEZ:**

22 **Q.** Sir, I'd like to ask you about a few exhibits. I'd like
23 to start with 2241. Do you see the binder to the left?

24 **A.** Yes.

25 **Q.** The series of emails that you were part of. If you look,

1 2241 is an email chain. Do you see at the very top, there's an
2 email to you? Do you see that?

3 **A.** Yes.

4 **MR. GONZÁLEZ:** Now, Your Honor, move 2241 into
5 evidence.

6 **THE COURT:** Any objection? Any objection?

7 **MR. LYONS:** No objection.

8 **THE COURT:** Thank you. Received in evidence.

9 (Trial Exhibit 2241 received in evidence.)

10 **BY MR. GONZÁLEZ:**

11 **Q.** All right. The top email is May 3, 2016. This is around
12 the time period that you're doing work on this matter; correct?

13 **A.** You had previously referred to --

14 **Q.** This is the time period that you're doing work on this
15 matter; right?

16 **A.** Yes.

17 **Q.** And the email is from an investigator at Google; correct?

18 **A.** Yes.

19 **MR. GONZÁLEZ:** And, Andrew, if you could, in the
20 interest of time, go to page 6.

21 **BY MR. GONZÁLEZ:**

22 **Q.** On February 3rd, 2016, there's an email from Chelsea
23 Bailey to Kristinn.

24 Kristinn is the person who you mentioned earlier,
25 Gudjonsson. Mr. Gudjonsson is also working on this

1 investigation; correct?

2 A. Yes.

3 Q. "Hi, Kristinn. Hope you're well. We have a former
4 employee whose laptop we'd like to have forensics run on."
5 Right?

6 A. Yes.

7 Q. That's February 3rd. That's the week after
8 Mr. Levandowski leaves; correct?

9 A. I believe so.

10 MR. GONZÁLEZ: And if you can go, Andrew, to click 3.

11 BY MR. GONZÁLEZ:

12 Q. On February 8, Chelsea Bailey thanks Kristinn, "as well as
13 if there may have been any trade secret compromise."

14 Do you see that?

15 A. I do see that.

16 Q. And at the bottom, "Can you help us find out if there's
17 evidence of trade secret compromise." Right?

18 A. I see that.

19 Q. So one of the things that you all were looking for was
20 whether or not Mr. Levandowski had taken any trade secrets;
21 right?

22 MR. LYONS: Objection, Your Honor. No foundation with
23 regard to this witness because he said "you all" as opposed
24 what --

25 MR. GONZÁLEZ: Let me -- let me rephrase.

1 BY MR. GONZÁLEZ:

2 Q. You understood from this email that you received that one
3 of the things that Mr. Gudjonsson was looking for was whether
4 Mr. Levandowski stole trade secrets; right?

5 A. I can't speak for Mr. Gudjonsson.

6 Q. All right.

7 MR. GONZÁLEZ: Let's go to clip 4.

8 BY MR. GONZÁLEZ

9 Q. There's another email. This one's February 16. It's part
10 of this chain. "Stacy is aware and has discussed with David
11 Drummond? Stacy is Stacy Sullivan; correct?

12 A. I have no idea.

13 Q. Do you -- David Drummond is the top lawyer at Google; is
14 that right?

15 A. I believe he is a lawyer at Google.

16 Q. Do you know that he's the top lawyer, the general counsel
17 for Alphabet, Google's parent company?

18 A. That's possible.

19 Q. "Also, L and S seemed to have some interest in this
20 topic."

21 Do you see that?

22 A. I do see that.

23 Q. You understand "L and S" is Larry Page and Sergey Brin,
24 the founders of the Google; correct?

25 A. I was asked about this in my deposition. My response was

1 I don't know.

2 Q. Do you have any reason to think it's any other L and S?

3 A. I didn't even recall seeing this email until it was put in
4 front of me in my deposition.

5 Q. All right.

6 MR. GONZÁLEZ: And then clip 5.

7 BY MR. GONZÁLEZ

8 Q. On March 8, 2016, this is from page 2, right there in the
9 middle "plus Gary Brown." Do you see that?

10 A. Yes.

11 Q. That's when were you added to this email string; correct?

12 A. That is correct.

13 Q. Sir, could you please turn to 2232.

14 MR. GONZÁLEZ: Or, Andrew, could you please play 2260,
15 which is in evidence, that he was just shown.

16 BY MR. GONZÁLEZ:

17 Q. This is one of the documents, sir -- let me call your
18 attention first to this document which your lawyer just showed
19 you. This is one of the documents you saw. It says,
20 "Examiners: Kiddi and someguyiknow."

21 Do you see that?

22 A. Yes.

23 Q. Who is "someguyiknow"?

24 A. That's me.

25 Q. And "Kiddi," who is Kiddi?

1 A. Kristinn Gudjonsson.

2 Q. All right. Now, let's go back to 2232.

3 2232, these are notes of a meeting that you participated
4 in on August 23, 2016; correct?

5 A. Possible.

6 Q. That's the same date that Uber's acquisition with Otto
7 closed; right?

8 A. It would appear so.

9 Q. Do you remember that on the same date that Uber's
10 acquisition of Otto closed, you participated in a meeting with
11 Kristinn Gudjonsson and with a roomful of lawyers?

12 A. I may have.

13 Q. Do you have any reason to think that you did not?

14 A. No, but I don't recall it.

15 Q. You'll notice on the participants, meeting participants,
16 you are listed, someguyiknow; correct?

17 A. Yes.

18 Q. And do you recall meeting with lawyers from a law firm
19 called Keker & Van Nest?

20 A. Yes.

21 Q. And do you recall that Kristinn was in that meeting,
22 Mr. Gudjonsson?

23 A. When I say I'm familiar with meetings with Keker &
24 Van Nest, there were multiple. And Kristinn may have been a
25 part of some of them.

1 Q. All right. Do you have any reason to believe that 2232 is
2 anything other than notes of that meeting?

3 A. No.

4 MR. GONZÁLEZ: Your Honor, I'd move 2232 into
5 evidence.

6 MR. LYONS: Objection. No foundation.

7 THE COURT: Sustained for now.

8 MR. GONZÁLEZ: Your Honor, you had indicated earlier
9 that we might, from time to time, be able to use an exhibit
10 with a representation that the foundation would be laid later.

11 THE COURT: Yes.

12 BY MR. GONZÁLEZ:

13 Q. Under "author" -- you see the top of the document under
14 "author"?

15 A. Yes.

16 Q. "Kiddi," that's Kristinn Gudjonsson; right?

17 A. Yes.

18 MR. GONZÁLEZ: Your Honor, we'll bring in
19 Mr. Gudjonsson, if we have to, to lay the foundation as the
20 author. This is --

21 THE COURT: All right. I'll -- can I see the
22 document, actually?

23 MR. GONZÁLEZ: The scribbles are mine.

24 THE COURT: You say this is a forgery?

25 MR. LYONS: No, Your Honor. There was no foundation

1 for this witness. That was the only objection I have.

2 **THE COURT:** Well, but counsel is going to bring in
3 Kiddi --

4 **MR. GONZÁLEZ:** Mr. Gudjonsson.

5 **THE COURT:** -- to lay the foundation, if need be.

6 **MR. LYONS:** Your Honor, I'll let the exhibit come in
7 subject to being able to look at it. But I have no objection
8 on authenticity grounds or anything like that.

9 **THE COURT:** 2232 is in evidence.

10 (Trial Exhibit 2232 received in evidence.)

11 **BY MR. GONZÁLEZ:**

12 **Q.** All right. This is the first page of 2232.

13 **MR. GONZÁLEZ:** Andrew, can you please just go to the
14 date for now and some of the participants.

15 **BY MR. GONZÁLEZ:**

16 **Q.** August 23, 2016, the date our deal closes.

17 You are someguyiknow; right?

18 **A.** I am.

19 **Q.** Mybarra and rmeny, kvn, those are outside lawyers that you
20 brought in -- that your employer brought in from Keker &
21 Van Nest; correct?

22 **A.** That seems possible.

23 **Q.** And you recognize other names as being lawyers here, don't
24 you?

25 **A.** Yes.

1 Q. Which ones do you recognize as being lawyers -- in-house
2 lawyers at Google?

3 A. Blackhart.

4 Q. What about michaelpfyl, right above blackhart?

5 A. I'm unfamiliar with him. I've seen his name on things,
6 but I'm not sure if he's a lawyer.

7 Q. Fair enough. What about Laurie Abraham?

8 A. Can you point that out?

9 Q. Right -- right before you is Kiddi.

10 A. That's Abraham Lu. He's a security analyst.

11 Q. All right. So you have this meeting. And it says -- the
12 second bullet says "Background introduced for all parties
13 involved." Did you see that bullet right there? It says
14 "Background introduced for all parties involved." Do you see
15 that?

16 A. I do see that.

17 Q. Who was the person who was speaking about the background
18 to educate everybody?

19 A. I have no idea. As I mentioned before, the notes would
20 imply that I was at this meeting, but I could not tell you who
21 wrote what line and who spoke what line that was transposed.

22 MR. GONZÁLEZ: Andrew, next clip, please.

23 BY MR. GONZÁLEZ:

24 Q. I'm going to ask you just a couple of these entries.

25 A. Sure.

1 Q. "He" -- referring to Mr. Levandowski. "He announced that
2 he wanted to start his own company that was involved in
3 autonomous trucks which would not be a direct competitor to
4 Google. That was the general agreement."

5 Do you see that?

6 A. I do see that.

7 Q. Do you recall somebody discussing at this meeting that
8 there was an agreement that Mr. Levandowski could start his own
9 company as long as he didn't compete with Google?

10 A. I don't specifically recall that.

11 Q. Do you have any recollection at all as to what that means
12 when it says "that was the general agreement"? Do you have any
13 recollection of what that means?

14 A. I don't know. I don't know how these agreements work when
15 people leave the company.

16 Q. All right. And then below that, the next highlighted
17 item, "Uber is generally considered to be Chauffeur's main
18 competitor, which" --

19 You recall that being discussed; correct?

20 A. Possibly.

21 Q. You understood that at the time?

22 A. One of -- everybody has a -- some type of self-driving car
23 endeavor these days.

24 Q. All right. And then it says, "Which contradicts what they
25 learned from Anthony with his intent to not be in the same

1 space and compete against Google."

2 Do you recall that being discussed?

3 A. Not specifically.

4 Q. Do you recall there being discussion that there was an
5 agreement or an understanding with Mr. Levandowski that it was
6 okay as long as he didn't get into the same space and compete
7 against Google?

8 A. I don't. I was not part of those discussions or these
9 interviews or any of that.

10 Q. All right. The next item at the bottom says, "If Google
11 were to take actions on preventing the acquisition, we need to
12 move as quickly as possible."

13 Do you see that?

14 A. I do see that.

15 Q. The acquisition there, preventing the acquisition, that's
16 Uber's acquisition of Otto; correct?

17 A. Possibly.

18 Q. Do you recall that being discussed in this room while you
19 were sitting there with a bunch of lawyers?

20 A. Not specifically.

21 Q. Now, I want to pause right here. You gave a lot of
22 testimony about all of these things that you looked at about
23 the SVN server. Do you recall that?

24 A. I do.

25 Q. When did you do that work?

1 A. Sometime in the summer of 2016.

2 Q. Summer of 2016?

3 A. Yes. Sometime between maybe July and October.

4 Q. When you began doing your work in March and you saw
5 Mr. Gudjonsson was doing work in February, did either one of
6 you look at the SVN server at that time?

7 A. No.

8 Q. Nobody asked you to; right?

9 A. No.

10 Q. And neither one of you thought, hey, that's an important
11 place to look? Neither one of you thought that; right?

12 A. Uhm --

13 MR. LYONS: I'll object.

14 MR. GONZÁLEZ: I'll rephrase. I'll rephrase.

15 BY MR. GONZÁLEZ:

16 Q. You didn't think that that was an important place to look,
17 did you?

18 A. I was not familiar with the entirety of Waymo's
19 infrastructure at that time.

20 Q. All right. Let me have you turn, sir, to 2211.

21 2211 is another email chain that you're part of; correct?

22 A. Yes.

23 MR. GONZÁLEZ: Move 2211 into evidence, Your Honor.

24 MR. LYONS: No objection, Your Honor. I'll just note
25 it's beyond the scope of direct.

1 **THE COURT:** Received.

2 (Trial Exhibit 2211 received in evidence.)

3 (Document displayed.)

4 **MR. GONZÁLEZ:** The top email, please.

5 **BY MR. GONZÁLEZ:**

6 **Q.** The date is August 23rd of 2016. Do you see that?

7 **A.** I do.

8 **Q.** That's the same exact date that you had the meeting with
9 all these lawyers; right?

10 **A.** Seems so.

11 **MR. GONZÁLEZ:** Andrew, can we go to the page before.

12 Okay.

13 **BY MR. GONZÁLEZ:**

14 **Q.** On the second page of this email chain, there's an email
15 from Kevin Vosen. Do you see that name?

16 **A.** Yes.

17 **Q.** Kevin Vosen is the top lawyer, the general counsel, for
18 Waymo; correct?

19 **A.** It's possible.

20 **Q.** Do you know -- you don't know the name?

21 **A.** I've heard the name before. I don't know what his title
22 is.

23 **Q.** You know he's a lawyer?

24 **A.** He could be.

25 **Q.** Okay. It says, "Based on discussions with Drummond this

1 morning, we should accelerate our investigation."

2 You understand that to be David Drummond?

3 A. That seems plausible.

4 Q. "We also need to decide when and whether to notify Uber of
5 our concerns or potential concerns."

6 Do you see that?

7 A. I do see that.

8 Q. Are you aware of any notification to Uber, before this
9 lawsuit was filed, that Anthony Levandowski or Uber had
10 allegedly done anything wrong?

11 A. I'm not party to any of these intercompany communications,
12 so I wouldn't be able to speak to that.

13 Q. Number 3, this is the bottom of the first page. "John K.
14 has now said he wants this investigation done in a week."

15 Do you see that?

16 A. I do see that.

17 Q. That's John Krafcik?

18 A. Could be.

19 Q. Do you know of any other John K.?

20 A. No, but I don't know if at that time I knew of John
21 Krafcik.

22 Q. Mr. Krafcik is the CEO of the company; correct?

23 A. I'm aware of that now.

24 Q. Do you recall that there was a lot of pressure to get this
25 done quickly?

1 **A.** No more than any other incident that we handle.

2 **Q.** Do you recall that management was eager to find something,
3 anything, that they could use to try to stop that deal?

4 **A.** I don't report directly to lawyers, and our management
5 trusts us to do our job.

6 **Q.** All right. Could you turn, please, to 2242.

7 This is another email chain that you're part of; correct?

8 **A.** Yes.

9 **MR. GONZÁLEZ:** Move 2242 into evidence, Your Honor.

10 **MR. LYONS:** No objection, Your Honor. Note again this
11 is beyond the scope of direct.

12 **THE COURT:** Well, it bears on this general subject
13 matter that you got into, so that objection is overruled.

14 2242 in evidence.

15 (Trial Exhibit 2242 received in evidence.)

16 (Document displayed.)

17 **BY MR. GONZÁLEZ:**

18 **Q.** Sir, I want to start on the second page of the email.

19 **MR. GONZÁLEZ:** Andrew, can you put up the first.

20 **BY MR. GONZÁLEZ:**

21 **Q.** Thomas Gorman -- that's a name I don't think we've heard
22 yet.

23 Thomas Gorman is yet another lawyer from the law firm
24 Keker & Van Nest, that Google hired to help with this
25 investigation; correct?

1 A. Tom Gorman, I believe, is a lawyer at Keker & Van Nest.

2 Q. All right. And you've had a lot of communications with
3 that lawyer; correct?

4 A. I've spoken with Tom, yes.

5 Q. Okay. And on September 13 --

6 MR. GONZÁLEZ: Back, Andrew.

7 BY MR. GONZÁLEZ:

8 Q. On September 13, Mr. Gorman is asking Kristinn and Gary --
9 that's Mr. Gudjonsson and you; right?

10 A. Yes.

11 Q. He's asking, "Have you finished reviewing all of the
12 Xoogler's laptops"; right?

13 A. Yes.

14 Q. And, by the way, that's not a typo. "Xooglers" means
15 former Google employees; right?

16 A. That is correct.

17 Q. Once they leave, you call them Xooglers. I don't even
18 know how to pronounce that, but that's what that means; right?

19 A. Yes.

20 Q. Okay. And they're asking you if you've finished reviewing
21 all of the Xoogler laptops. Do you see that?

22 A. Yes.

23 Q. Because at that time you weren't just looking at
24 Mr. Levandowski's laptop, you were looking at everybody who
25 left and was now at Uber; isn't that right?

1 **A.** It's hard to enumerate specifically.

2 **Q.** All right. You were looking at lots of different people
3 who had left; right?

4 **A.** We were investigating multiple individuals.

5 **Q.** Okay. More than a dozen; right?

6 **A.** I don't know.

7 **Q.** Okay.

8 **MR. GONZÁLEZ:** Andrew, next one, Number 2.

9 **BY MR. GONZÁLEZ:**

10 **Q.** Then you write back on September 15th, "So I met with
11 Keker & Van Next" -- that's what KVN means; right?

12 **A.** Yes.

13 **Q.** "I met with KVN external lawyers today, and they have some
14 requests with a super aggressive timeline, like as soon as
15 humanly possible."

16 Now you're telling us that there was no big hurry to get
17 this done? It was just a normal investigation?

18 **A.** So when I say no more than our regular security incidents,
19 we have different priorities to different incidents where -- a
20 P0 is suspected compromise, live actor, very time sensitive.
21 And P4 is not so urgent, you know, put it below other things.

22 **Q.** Okay. The lawyers that Google hired to investigate were
23 telling you "as soon as humanly possible"; right?

24 **A.** It would appear so.

25 **Q.** Can you turn to 2215?

(Witness complied.)

Q. The very top email of this chain is an email that you were copied on; correct?

A. Yes.

MR. GONZÁLEZ: Your Honor, I'd move 2215 into evidence.

MR. LYONS: Without objection.

THE COURT: Thank you.

It's in evidence.

(Trial Exhibit 2215 received in evidence.)

BY MR. GONZÁLEZ

Q. Just for the jury to know, the date October 7, 2016, you're still working on this; right?

A. Possibly.

Q. The email I just showed you a second ago where the lawyers said get it done as humanly possible, were you done with it by now?

A. What was the date on that?

Q. I believe it was September 15.

A. And what was your question?

Q. Were you done?

A. I don't know.

Q. All right. And it's to Mr. Gorman and to you; right?

A. Yes.

Q. Mr. Gorman being the lawyer; right?

1 A. Yes.

2 Q. "Anthony had two laptops assigned to him, and he also had
3 a workstation."

4 Now, a couple of points. I think the judge made one of
5 them, which is that the laptop that this stuff was downloaded
6 onto was a Google laptop; right?

7 A. Please clarify which stuff.

8 Q. The 14,000 files that you just testified about.

9 A. Those files were downloaded to a laptop that had been
10 assigned to him.

11 Q. By Google?

12 A. Yes.

13 Q. All right. And then he also had a workstation; right?

14 A. Yes.

15 Q. A workstation is like a computer that you have on your
16 desk; right?

17 A. Like a desktop.

18 Q. A desktop. Thank you.

19 And that desktop, you never got to examine it, did you?

20 A. It had been returned to inventory and repurposed.

21 Q. Because Anthony Levandowski's desktop, even though you
22 were in the middle of an investigation, Google wiped it clean
23 and assigned it to somebody else; right?

24 A. It had been collected and repurposed.

25 Q. Okay. Let's just -- let me try some plain English. When

1 you say "repurposed," Google wiped it clean and assigned it to
2 another employee in the middle of an investigation; right?

3 **A.** At some point, they -- I'm not sure when it was collected.

4 **Q.** Well, the dates are on the screen, sir.

5 **THE COURT:** Listen -- well, you're not answering his
6 question. Let's take it.

7 Was it wiped clean?

8 **THE WITNESS:** It was.

9 **THE COURT:** And was it assigned to somebody else?

10 **THE WITNESS:** Yes, it was.

11 **BY MR. GONZÁLEZ:**

12 **Q.** And it was reassigned to another user on February 24th, as
13 indicated up there on the email; right?

14 **A.** Yes.

15 **Q.** And that's right in the middle of your investigation;
16 right?

17 **A.** Possibly. I would need to look at the exact date that
18 even the first laptops got to us.

19 **Q.** Okay.

20 **MR. LYONS:** Can the witness finish the answer?

21 **BY MR. GONZÁLEZ**

22 **Q.** I'm sorry. I thought you were finished.

23 **THE COURT:** Please finish your answer.

24 **THE WITNESS:** It's also worth noting that we had no
25 reason to believe -- there was no evidence of anything

1 particularly unusual going on, on that device as opposed to the
2 download that I walked through earlier where we had identified
3 his laptop.

4 **BY MR. GONZÁLEZ:**

5 **Q.** As of February 24th -- or, actually, February 18th, when
6 it was reformatted, had anybody even inspected his workstation?

7 **THE COURT:** What year is --

8 **MR. GONZÁLEZ:** This is 2016, Your Honor. This is just
9 a few weeks after Mr. Levandowski leaves, it's reformatted.

10 **BY MR. GONZÁLEZ**

11 **Q.** Nobody had even examined it before it was reformatted;
12 isn't that true?

13 **A.** I don't know that we examined anything that belonged to
14 him by February 18th, 2016.

15 **Q.** All right. So just to be clear, it wasn't erased because
16 somebody examined it and concluded there was no evidence that
17 might be helpful; right?

18 **A.** I believe that to be correct.

19 **Q.** Next clip.

20 All right. October 5, 2016, Mr. Gorman, the lawyer hired
21 by Google from Keker & Van Nest is writing an email. And this
22 is his response to Mr. Gudjonsson. The email that I just sent
23 you, this is Mr. Gorman's response. And what he says is, he
24 refers --

25 **MR. GONZÁLEZ:** Andrew, can you highlight

1 December 11th.

2 **BY MR. GONZÁLEZ:**

3 **Q.** Do you see that date, December 11th?

4 **A.** I do.

5 **Q.** He's referring to the download that you just talked about;
6 right?

7 **A.** Yes.

8 **Q.** And what he says about those documents is "those aren't
9 the crown jewels." That's what your own lawyer said about
10 these documents; right?

11 **A.** Those words are said.

12 **Q.** Sir, just a couple more questions.

13 So when Mr. Levandowski downloaded the 14,000 files on
14 December 11th, did any alarm bells go off anywhere?

15 **A.** Not on December 11th, to my knowledge.

16 **Q.** Who was the person at Google, at that time, who's
17 responsible for making sure that when somebody downloads 14,000
18 files, they have a legitimate reason to do that? Who's
19 responsible for that back then?

20 **A.** I'm not sure.

21 **Q.** Nobody -- nobody at Google supervised that SVN repository
22 to monitor who was downloading the entire database. Nobody did
23 that; right?

24 **A.** I don't know.

25 **Q.** If these documents were important, don't you think that

1 would be a good idea, is to put somebody in charge of keeping
2 an eye on the repository so that if somebody downloads
3 everything, maybe somebody might ask a question about, "Hey,
4 why did you do that?"

5 Do you think that would have been a good idea from a
6 security standpoint?

7 **A.** Possible, but it's very hard to detect malicious insiders.

8 **Q.** But it's not hard to detect when somebody downloads the
9 entire database. That's not hard, is it?

10 **A.** I don't know.

11 **Q.** Thank you.

12 **MS. DUNN:** That's all I have, Your Honor.

13 **MR. LYONS:** Can I have a second, Your Honor?

14 **THE COURT:** Okay.

15 (Discussion held off the record amongst Plaintiff's
16 counsel.)

17 **REDIRECT EXAMINATION**

18 **BY MR. LYONS**

19 **Q.** Just a few questions, sir.

20 With regard to the time that you worked on this
21 investigation, when did you start?

22 **A.** With respect to Mr. Levandowski's devices?

23 **Q.** Yes.

24 **A.** Sometime in the summer of 2016.

25 **Q.** Now, during the time that you started looking at his

1 devices, did you look at a number of different types of
2 devices?

3 A. Yes.

4 Q. Okay. When is the first time that you looked at the
5 laptop that you found the downloads on?

6 A. Probably around October.

7 Q. So with regards to counsel's comments about a lot of
8 things that you worked on, with regards to the download, the
9 first time that you looked at that particular computer was in
10 October; is that correct?

11 A. That is correct.

12 Q. Okay. And how is it that you began looking at the laptop
13 in October?

14 A. We had received information that it was suspected Anthony
15 Levandowski had downloaded files from the SVN server.

16 Q. To his laptop?

17 A. Yes.

18 Q. Now, with regards to the workstation that you referred to
19 earlier that you said had been re-inventoried and put back into
20 use, you recall that testimony?

21 A. I do.

22 Q. Okay. With regard to that laptop, I think counsel
23 indicated to you that the lap- -- excuse me, that the
24 workstation was collected in February, 2016?

25 A. Yes.

1 Q. Okay. And at that time, to your knowledge, was there any
2 suspicion that Mr. Levandowski had improperly used the
3 workstation?

4 A. No.

5 Q. With regards to the devices that you were working on in
6 March that you were shown exhibits about, what devices with
7 regard to Mr. Levandowski were you looking at?

8 A. None.

9 Q. Now, with regard to other individuals in March of 2016,
10 were you looking at other devices?

11 A. I was.

12 Q. Okay. But with regards to Mr. Levandowski, when is the
13 first device that you looked at with regard to him?

14 A. Sometime in the summer of 2016. Thank you for allowing me
15 to clarify.

16 Q. And what was the -- the first device that you looked at
17 with regard to him?

18 A. Anthony Levandowski, would have been the Windows laptop
19 that had become a Linux laptop.

20 Q. So with regard to counsel's comments about all of the
21 activity that other people were doing, with regards to the work
22 that you did as a witness who's here testifying today, you
23 first started your work in the summer of 2016; is that correct?

24 A. Yes.

25 Q. Now, you were asked some questions about the SVN server

1 and security on the SVN server; right?

2 A. Yes.

3 Q. Are you here to testify today about the security
4 precautions of the SVN server?

5 A. Not particularly.

6 Q. So with regard to whether it would be a good idea to do
7 certain things with regard to the SVN server, are you in a
8 position to testify about what you think is a good idea about
9 what should be done?

10 A. I don't believe so.

11 Q. Okay. Did you set up the SVN server?

12 A. I did not.

13 Q. Okay. With regard to the work you did regarding the SVN
14 server, you did some investigation about downloads from that
15 particular server; correct?

16 A. Yes.

17 Q. And that was what you testified about?

18 A. Yes.

19 Q. The drive download that you discussed with regards to the
20 card reader, you recall that testimony?

21 A. Yes.

22 Q. Okay. There was a laptop that was his workstation laptop?

23 A. Yes.

24 Q. And then there was a transcend device that was accessed or
25 that -- excuse me, plugged into the computer; correct?

1 **A.** That is correct.

2 **Q.** And then the device was removed; correct?

3 **A.** Yes.

4 **Q.** Okay. Now, with regard to the workstation laptop that he
5 had, that was reformatted; correct?

6 **A.** Yes.

7 **Q.** Okay. Now, as you sit here today, did you personally
8 investigate whether Mr. Levandowski removed any files from his
9 workstation that you examined, the laptop that you examined,
10 and put it on a personal computer that did not belong to
11 Google?

12 **A.** The granularity of the logs available to us did not
13 include that visibility and any artifacts that would have
14 allowed us to confirm or refute that happening were erased with
15 the reimage.

16 **Q.** So with regard to the work that you did, as you sit here
17 today, you have no personal knowledge as to whether
18 Mr. Levandowski took the card reader and put it into some other
19 device?

20 **A.** I have no knowledge, no.

21 **Q.** Okay. If we wanted to find that out, we'd have to bring a
22 different witness to court?

23 **A.** Yes.

24 **Q.** Okay. With regard to the information that you do know,
25 though, did you have an opinion as to whether it was

1 appropriate for Mr. Levandowski to remove the information from
2 the SVN server and put it onto a card reader?

3 **MR. GONZÁLEZ:** Objection. Relevance, Your Honor.

4 403. His opinion, I'm not sure is proper.

5 **MR. LYONS:** Your Honor, if I may --

6 **THE COURT:** Present day opinion is excluded.

7 Sustained.

8 **BY MR. LYONS**

9 **Q.** With regard to whether it was appropriate to remove the
10 information from the SVN server and put it on a device that was
11 not a Google-issued device, do you have an understanding as to
12 whether that's appropriate for Google employees?

13 **MR. GONZÁLEZ:** Same objection, Your Honor.

14 **THE COURT:** Well, no. You asked questions like,
15 "Don't you think it would have been a good idea?"

16 **MR. GONZÁLEZ:** Fine. Let him answer.

17 **THE COURT:** All right. So this is about the same, so
18 he can --

19 **MR. GONZÁLEZ:** Appreciate that.

20 **THE COURT:** Fair enough. Go ahead. Ask that
21 question.

22 **THE WITNESS:** This type of removal is against policy.

23 **MR. LYONS:** Thank you. Nothing further.

24 **THE COURT:** All right. May the witness be excused?

25 **MR. GONZÁLEZ:** As a concession to the shortness of

1 life, yes.

2 (Laughter.)

3 **THE COURT:** Okay. Thank you, Mr. Brown. You're free
4 to go.

5 **THE WITNESS:** Thank you.

6 **THE COURT:** Have a good day.

7 **THE WITNESS:** You too, Your Honor.

8 (Witness excused.)

9 **THE COURT:** We're going to -- we're going to go on to
10 our next witness and probably interrupt him in the middle, but
11 I want to push on unless somebody over there in the jury box
12 needs a break.

13 (No response.)

14 **THE COURT:** Seeing no hands shoot up, I'm going to ask
15 the plaintiff to call the next witness.

16 **MR. PERLSON:** Good morning, Your Honor. David
17 Perlson. Waymo calls William Grossman.

18 **THE COURT:** William Grossman?

19 **THE WITNESS:** Yes.

20 **THE COURT:** Raise your right hand, please.

21 **WILLIAM GROSSMAN,**
22 called as a witness for the plaintiff, having been duly sworn,
23 testified as follows:

24 **THE WITNESS:** I do.

25 **THE CLERK:** Please be seated. Speak directly into the

1 microphone. State your name for the court, and spell your last
2 name, please.

3 **THE WITNESS:** My name is William Grossman, and my last
4 name is spelled G-R-O-S-S-M-A-N.

5 **THE COURT:** All right. Welcome again.
6 Counsel, go ahead.

7 **MR. PERLSON:** Okay. Thank you, Your Honor.
8 Your Honor, just for notice, there's going to be a few
9 portions -- a few exhibits that will be shown to the jury only
10 that can't be shown to the gallery.

11 **THE COURT:** Remind us when we get there.

12 **MR. PERLSON:** Absolutely, Your Honor.

13 **DIRECT EXAMINATION**

14 **BY MR. PERLSON**

15 **Q.** Good morning. Can you please introduce yourself to the
16 jury?

17 **A.** Yeah, hi. My name's William Grossman.

18 **Q.** And where do you live, Mr. Grossman?

19 **A.** I live in Palo Alto.

20 **Q.** Where did you grow up?

21 **A.** I grew up in Northern California. I was born in Lodi and
22 I went to high school in Davis.

23 **Q.** And where do you work now?

24 **A.** I work at Waymo.

25 **Q.** When did you start working at Waymo?

1 **A.** I began at Waymo in roughly 2014. Back then, it was the
2 self-driving car project part of Google and it recently became
3 part of -- recently became Waymo.

4 **Q.** Did you go to college?

5 **A.** I did.

6 **Q.** Where?

7 **A.** I went to UC Berkeley here in the Bay, and I studied
8 mechanical engineering.

9 **Q.** Did you go to graduate school?

10 **A.** I did. After UC Berkeley, I went to Stanford and I did a
11 Master's in mechanical engineering as well, with a sub-focus on
12 embedded systems.

13 **Q.** Embedded systems, what's that?

14 **A.** Embedded systems is the study of low-level electronic
15 hardware with low-level software, and you combine the two and
16 it's what makes up a lot of smart products that you would use
17 on a daily basis.

18 So, like a smart doorknob would be an embedded system,
19 coffeemakers can be embedded systems; that type of thing.

20 **Q.** Did you have any jobs in between Stanford and Waymo?

21 **A.** Yeah, I did. After I graduated Stanford, I moved to
22 San Francisco and started working at a company called ODG, and
23 we were making augmented reality glasses.

24 After that, I started a company with two friends and we
25 were doing large scale aerial imaging using drones.

1 Q. Why did you join Waymo?

2 A. I joined Waymo because I -- because the technology is
3 really cool and compelling to me. It's a good fit with my
4 background. They were looking for somebody with my particular
5 set of skills and I had -- I knew people that were working
6 there and they -- you know, they said it was a pretty good
7 environment, so I -- so I joined them.

8 Q. Okay. And what do you do at Waymo?

9 A. So my job title is hardware engineer, and I work on the
10 SDS architecture group.

11 Q. SDS architecture, what's that?

12 A. So SDS stands for self-driving systems and it encompasses
13 all of the hardware that we build that's necessary to put on a
14 car to make it self-driving, all the extra hardware.

15 And the architecture group is responsible for working with
16 a lot of the different teams, the -- the LiDAR teams, the radar
17 teams, the computer teams, all the different pieces of
18 hardware, the embedded electronics teams, that bring all of
19 their different disciplines together.

20 And the architecture group kind of managed that coming
21 together and make sure that it all comes together well and
22 makes the car drive itself.

23 Q. Do you work with -- do you work on the laser team that
24 develops LiDAR at Waymo?

25 A. I do not.

1 Q. Do you work with the laser team?

2 A. I have worked with them in the past, yes.

3 Q. Do you work with PCBs at Waymo?

4 A. I have, yeah.

5 Q. And what's a PCB?

6 A. Yeah. So a PCB is a printed circuit board and it's a
7 substrate, typically very thin, that you would solder
8 electronic components onto, typically called chips. You might
9 have heard of those.

10 And their PCB is the basis of almost all modern
11 electronics. So if you open your cell phone, if you open your
12 watch, if you open -- even your coffeemaker will have a PCB in
13 it these days.

14 Q. And before you joined Waymo, did you have experience with
15 PCBs?

16 A. Yes, I did.

17 Q. About how many years have you worked with them?

18 A. I -- in grad school, I've worked with them. I've designed
19 them. I've had them manufactured. I've debugged them, which
20 is just a fancy way of saying you troubleshoot issues with the
21 PCBs. It's maybe been at least ten years now.

22 Q. How many different types of PCBs have you seen over the
23 years?

24 A. Thousands. Many.

25 MR. PERLSON: Your Honor, I'm going to show -- if you

1 could turn to TX-4835 in your binder?

2 Mr. Fisher, we can show just the top part of this is in --
3 we can show --

4 **MR. GONZÁLEZ:** Do you have a binder?

5 (Whereupon exhibit binder was tendered to counsel.)

6 **BY MR. PERLSON**

7 **Q.** Do you recognize this email?

8 **A.** Yes, I do.

9 **Q.** And what is it?

10 **A.** This is an email that I received on December 13, 2016.
11 It's from Eri Suzuki and was sent to me.

12 **MR. PERLSON:** Your Honor, we move to admit TX-4835.

13 **MR. GONZÁLEZ:** No objection.

14 **THE COURT:** Received.

15 (Trial Exhibit 4835 received in evidence.)

16 **BY MR. PERLSON**

17 **Q.** Mr. Grossman, what is Gorilla Circuits?

18 **A.** Gorilla Circuits is a vendor down in San Jose that
19 manufactures PCBs.

20 **Q.** Does Waymo work with Gorilla Circuits?

21 **A.** Yeah, we have in the past. Different groups have worked
22 with Gorilla Circuits.

23 **Q.** And have you worked with Gorilla Circuits in the past?

24 **A.** Yeah. I've worked within groups that have had our PCBs
25 manufactured within -- with Gorilla Circuits, yes.

1 Q. Where were you when you got this email in December 2016?

2 A. I was sitting at my desk in front of my computer down at
3 our headquarters in Mountain View.

4 Q. Were you expecting to receive this email from Ms. Suzuki?

5 A. No, I was not.

6 Q. Do you see the -- if you look on the email, there's some
7 addresses from Gorilla Circuits. Do you see that?

8 A. In the -- in the "To" line? Yeah.

9 Q. And then in the "cc" line, there's an
10 uber@gorillacircuits.com?

11 A. Uh-huh.

12 Q. Did you know what that was at the time you received it?

13 A. No, I didn't.

14 Q. Now, if you look at the subject of the email, it says,
15 "Otto Files." Do you see that?

16 A. Yes.

17 Q. When you got this email, did you know what Otto files was?

18 A. I did not.

19 Q. Had you heard the name Otto before?

20 A. Yeah. I had heard of Otto in the context of a
21 self-driving company that was recently started by some -- some
22 former Waymo employees, including Anthony Levandowski.

23 Q. Okay. Does this email have any attachments to it?

24 A. Yeah. It says right here it's got a zip folder,
25 "manufacturing docs for Fuji laser."

1 Q. Okay.

2 MR. PERLSON: Mr. Fisher, if you could pull up the
3 native portion of that? Open that up. Okay.

4 (Document displayed.)

5 BY MR. PERLSON

6 Q. So first of all, what's a zip -- what's a zip file?

7 A. A zip file is a compression of lots of different
8 documents, and you compress it so that it's smaller and you can
9 send it more quickly through the internet.

10 Q. So what was in this zip file?

11 A. So this zip file contained a fab package, as we call it in
12 the industry. It's everything that you need to be able to
13 manufacture that specific PCB. So there's multiple files and
14 folders within the -- within here that contain all that
15 information.

16 MR. PERLSON: And so for this portion, Your Honor,
17 we'd just like to show one of these attachments to the jury and
18 not have it shown to the gallery.

19 THE COURT: Fine.

20 MR. PERLSON: Well, if you could pull up the Fuji
21 laser TX-100 assembly drawing, please?

22 (Document displayed)

23 THE WITNESS: Yeah.

24 BY MR. PERLSON

25 Q. Okay. So do you recognize this document?

1 A. Yes, I do.

2 Q. And what is it?

3 A. This is a 2D drawing of the PCB in question that was in
4 the attachments to the email.

5 Q. Okay. And does it have any -- does this -- does this
6 specification on it indicate a particular company it's
7 associated with?

8 MR. RABIN: No. Not that I can tell or not that I -- I
9 could tell. It just says -- it's got the title down here "Fuji
10 Laser TX," you know, so on.

11 Q. Did you know what Fuji was at the time that you received
12 this email in December 2016?

13 A. No, I didn't.

14 Q. Okay. What was your reaction when you -- when you saw
15 this attachment to the email?

16 A. I was a little surprised and confused that it looked like
17 one of the PCBs that we have in one of our LiDAR systems.

18 Q. And which PCB is that?

19 A. This is the -- so it looks like the -- the GBr3 transmit
20 board.

21 Q. What's the GBr3 transmit board?

22 A. So GBr is a LiDAR, and within it are lots of PCBs. And
23 the GBr3 transmit board is one of those PCBs. And it houses,
24 or it has soldered onto it, laser diodes.

25 And that PCB is what actually shoots out the lasers that

1 form sort of a -- one of the key components of the LiDAR
2 system. That's the photons leaving the little -- the LiDAR
3 unit.

4 **Q.** Okay. If you could turn in your folder to TX --
5 demonstrative TX-2963?

6 **MR. PERLSON:** This, again, I'd like to show to the
7 jury and not to the gallery.

8 **THE COURT:** Okay. Make sure that this is not being
9 shown publicly, just to the jury and counsel.

10 (Photograph displayed.)

11 **THE WITNESS:** Where does -- oh, okay, I see it.

12 **BY MR. PERLSON**

13 **Q.** Yeah. What's -- what's in this photo?

14 **A.** So this is a photo of a stackup of GBr3 transmit boards.

15 **MR. PERLSON:** Mr. Fisher, can you put this
16 demonstrative 29 -- or 2863 next to the blow-up you had of the
17 assembly drawing?

18 (Documents displayed side-by-side.)

19 **BY MR. PERLSON**

20 **Q.** Why is that you -- what was it in the specification that
21 you saw attached to the Gorilla email in December 2016 that
22 made you think that it looked like the GBr3 that's pictured on
23 the right?

24 **A.** Yeah. So you can just take a -- take a look at the two
25 boards. They're very similar, but there's some key structure

1 to it that's really important.

2 So three sides are flat, and that's not particularly
3 interesting, but the one side, the left side here has a concave
4 structure. And then even within that concave structure, there
5 are very specific spacings and angles of the edge of the PCB
6 which are very unusual. Like, you wouldn't -- you wouldn't
7 just see that randomly.

8 And so it caught my eye and that's -- that's what, you
9 know, made me think that it was our board.

10 Q. Okay. When you -- when you got the email and after you
11 looked at it, did you contact -- did you respond to Gorilla?

12 A. I did not.

13 Q. Why not?

14 A. I don't know. I was a little confused about what I was
15 looking at and...

16 Q. Well, what did you do?

17 A. So I contacted my manager and showed him the email and the
18 attachments.

19 Q. Why did you do that?

20 A. I wanted to get his opinion on what I should do and kind
21 of escalate upwards.

22 Q. Okay. And who's your manager?

23 A. My manager is Ryan Andrade.

24 Q. And then what did you do after Mister -- after you talked
25 with Mr. Andrade?

1 **A.** So I spoke with Mister -- with Ryan and we decided that it
2 would be best to go talk to one of the leaders on the laser
3 team who was very familiar with this board and can kind of tell
4 us if this was our -- actually our board, and that was
5 Pierre-Yves Droz.

6 **Q.** Okay. So did you go talk to him?

7 **A.** I did, yes.

8 **Q.** Okay. And what -- what happened when you talked with him?

9 **A.** So we -- I went and spoke with Pierre. We went to a
10 conference room. I showed him the email, showed him the
11 attachments. And we -- he took a look at them and then we
12 decided that we should get Dmitri Dolgov involved. And Dmitri
13 is the VP of Engineering, so he's sort of the top engineer at
14 Waymo.

15 **Q.** Okay. Why did you decide to do that?

16 **A.** Again, we were sort of escalating things as we thought
17 this looked more and more like our board, and so we wanted to
18 get higher levels of management involved.

19 **Q.** Okay. And so now you've got Mr. Dolgov involved. What
20 did you do after that?

21 **A.** So Dmitri joined us. So it was Pierre, Dmitri and myself
22 sitting in the conference room. We showed him the files as
23 well. And at that point, we decided that we should get Legal
24 involved.

25 **Q.** And why was that?

1 **A.** Well, we thought that it looked like our board and that --
2 that the right thing to do was to, you know, get Legal
3 involved.

4 **Q.** Okay. And did you -- after -- and so did you send it to
5 Legal?

6 **A.** Yeah.

7 **Q.** Okay. And that's the email you got in December '16, the
8 Gorilla email?

9 **A.** Yes. Correct.

10 **Q.** After you sent the -- this email to Legal, did you show
11 the email and attachments to anybody else?

12 **A.** I did not.

13 **MR. PERLSON:** No further questions, Your Honor.

14 **THE COURT:** Thank you.

15 **CROSS-EXAMINATION**

16 **BY MR. GONZÁLEZ**

17 **Q.** Mr. Grossman, I'd like to clarify something.

18 **MR. GONZÁLEZ:** Andrew, can we put up Page 7 of
19 Exhibit 1307 for the jury only?

20 Andrew, blow up the drawing on the upper left, the board
21 on the upper left.

22 (Document displayed.)

23 **MR. GONZÁLEZ:** Okay. Can you turn it off? I said not
24 for public. Turn it off, those two.

25 Try that again. Only the jury and counsel. If we could

1 please display Page 7.

2 (Document displayed.)

3 **MR. GONZÁLEZ:** There we go. I'm assuming the jurors
4 can see a board in front of them.

5 **BY MR. GONZÁLEZ**

6 **Q.** Sir, I just want to clarify one little thing.

7 **A.** Yes.

8 **Q.** The reason you thought the shape was like yours because
9 three sides were flat, and that I can understand, and you said
10 one was concave?

11 **A.** Yes.

12 **Q.** Concave basically means, like, a curve; right?

13 **A.** Yes.

14 **Q.** Okay. All right.

15 **MR. GONZÁLEZ:** Andrew, can we show a side-by-side of
16 this -- well, I'm sorry.

17 Andrew, put up for the public -- put up for the public
18 Page 7 from Exhibit 1049.

19 (Document displayed)

20 **BY MR. GONZÁLEZ**

21 **Q.** Sir, just looking at that drawing on the bottom, three are
22 flat; right?

23 **A.** Yes.

24 **Q.** And one is concave; correct?

25 **A.** That is correct.

1 Q. Okay. Now --

2 MR. GONZÁLEZ: Madam Clerk, I'm sorry. No more
3 public, just the jury.

4 Andrew, can we do a side-by-side?

5 (Document displayed)

6 BY MR. GONZÁLEZ

7 Q. This is Page 7 from Exhibit 1307, which was the Gorilla
8 email, and Page 7 from Exhibit 1049, which is the publicly
9 available patent.

10 Sir, both of these have three flat sides and one concave
11 side; correct?

12 A. I can't see anymore.

13 Q. You can't see it on your screen either?

14 A. No.

15 THE COURT: Just a minute. Can we --

16 THE WITNESS: I can see it now.

17 BY MR. GONZÁLEZ

18 Q. You can see it there?

19 A. Yes.

20 Q. They both have three sides and one curved or concave;
21 correct?

22 A. That is correct.

23 Q. And the one on the right that you're looking at on the
24 right, you see the -- how it's got three holes on the
25 right-hand side? See those three?

1 **A.** Yeah. Okay.

2 **Q.** The one in the middle, you see the one in the middle is a
3 little bit bigger. You understand that to be a guide hole;
4 correct?

5 **A.** If you're telling me that that's a guide hole, okay.

6 **Q.** You don't have any reason to dispute that?

7 **A.** No. I don't have any specific information about it.

8 **Q.** All right. And then the -- you see the circle that goes
9 around -- it's not a circle. The part that goes around those
10 squares, that part there?

11 **A.** Yes.

12 **Q.** You understand that's a spacer; correct?

13 **A.** Again, I don't know that it's a spacer, but, sure, if
14 you're telling me it is.

15 **Q.** Right.

16 **MR. GONZÁLEZ:** Thank you, Your Honor. That's all I
17 have.

18 **MR. PERLSON:** Can we keep that up, the comparison?
19 Can you put that back up? Not to the public.

20 **THE CLERK:** Not to the public?

21 **MR. PERLSON:** Not to the public, just to the jury. Is
22 it up?

23 **THE COURT:** So you need to do the video feed to this
24 side of the room; right? So they can put it back up there the
25 way it was. And the gallery is off, please. Jury and witness,

1 okay.

2 Well, it was up there and then it went away.

3 **MR. PERLSON:** Now I can't see it.

4 **BY MR. PERLSON**

5 **Q.** Well, I think he showed you the patent. Is it on the left
6 or the right? Because I can't see it.

7 **A.** I think it was on the right.

8 **Q.** Okay.

9 **THE COURT:** It's not up here at all.

10 **THE CLERK:** Just a second.

11 **THE COURT:** What happened to the side-by-side
12 comparison?

13 **MR. GUEVARA:** The gallery monitor is still on, so I'm
14 not -- until we have that off, I can't show it.

15 **THE COURT:** Angie, switch it so that the right side of
16 the room is able to do inputs, and then they will put the --
17 there we go. It's up on the screen -- well, then it went away
18 again. What are you lawyers doing to me?

19 **MR. GUEVARA:** The gallery monitor is still on, Your
20 Honor.

21 **THE COURT:** All right. Here's the answer. It's your
22 examination. Your technical people have got to put it up.

23 Those people have failed us. Somebody has failed us, but
24 it's your exam. So if you can't get it up there yourself, too
25 bad.

1 **MR. PERLSON:** I think I can work around it, Your
2 Honor.

3 **THE COURT:** All right. Work around it.

4 **MR. PERLSON:** Did you get a cross binder? Did you
5 hand up a cross binder for him?

6 (Whereupon binder was tendered to the witness.)

7 **MR. PERLSON:** Can I get one too?

8 (Whereupon binder was tendered to counsel.)

9 **MR. PERLSON:** Thank you.

10 **BY MR. PERLSON**

11 **Q.** Okay. So if you could turn to, I guess it is 1049, which
12 is the -- the patent in Figure 4 that he showed you.

13 **A.** Yes. Figure 4. Okay.

14 **Q.** Okay. And then -- now, you were asked about this, and you
15 pointed out that there were three sides and one of them was
16 curved; remember?

17 **A.** Yes.

18 **Q.** And you pointed out that there were a couple of holes on
19 it?

20 **A.** Yes.

21 **Q.** Okay. If we could -- I think we should be able to do
22 this, show just to the jury the GBr3 demonstrative. Can you do
23 that? I think that should get us where we need to be.

24 (Photograph displayed.)

25 **MR. PERLSON:** Okay.

1 **BY MR. PERLSON**

2 **Q.** Now, other than the fact that there are three sides and a
3 curve and maybe a couple holes, are there other differences --
4 are there differences between the -- the board shown in
5 Figure 4 of the patent and the GBr3 in the demonstrative?

6 **A.** The GBr3 transmit board, yeah. So if you look closely,
7 there's a few differences. One of them is the spacing of the
8 structure within the concave side is not uniform. Whereas, in
9 the -- in the patent's, it looks much more uniform.

10 **Q.** Okay. Anything else? Any other differences?

11 **A.** Yeah. If you look -- and this is part of what struck my
12 eye initially. The angles of the edges are very specific, and
13 there's sort of a flow to them. Whereas, on the patent the
14 angles of the edge are -- they seem to all be the same. The
15 top portions look the same and the bottom portions look the
16 same.

17 **MR. PERLSON:** No further questions, Your Honor.

18 **THE COURT:** Thank you.

19 Anything more?

20 **MR. GONZÁLEZ:** Just one, sir.

21 Your Honor, I would like to play from his deposition,
22 Page 17, Lines 10 to 16.

23 **THE COURT:** Is that within the scope of what we just
24 heard?

25 **MR. GONZÁLEZ:** It's exactly.

1 **MR. PERLSON:** Your Honor, there's not even a question.

2 **MR. GONZÁLEZ:** It's to impeach the answer he just
3 gave.

4 **THE COURT:** Okay. It's fair. Go ahead. Play the --
5 roll the tape.

6 **MR. GONZÁLEZ:** 17/10 to 16.

7 (Videotape played in open court, not reported.)

8 **THE COURT:** Is that it?

9 **MR. GONZÁLEZ:** That's it.

10 **THE COURT:** Thank you.

11 **REDIRECT EXAMINATION**

12 **BY MR. PERLSON**

13 **Q.** Mr. Grossman, one last question. Were you shown the
14 patent at your deposition in relation to this question that
15 Mr. González asked you about in his examination?

16 **A.** No.

17 **MR. PERLSON:** No further questions.

18 **THE COURT:** All right. I'm going to excuse the
19 witness.

20 **MR. GONZÁLEZ:** Nothing else, Your Honor.

21 **THE COURT:** Mr. Grossman, thank you. You're free to
22 go. Have a good day.

23 **THE WITNESS:** Thank you.

24 (Witness excused.)

25 **THE COURT:** Okay. We're going to take our break now

1 for 15 minutes. Remember the admonition.

2 **THE CLERK:** All rise for the jury.

3 (Jury exits the courtroom at 10:58 a.m.)

4 **THE COURT:** Angie, I need you back here, please.

5 Everyone be seated.

6 All right. You lawyers explain to me what happened there
7 such that counsel for Waymo was unable to get the Arturo
8 Gonzalez side to do the fair thing and show the very slide you
9 had used.

10 **MR. GONZÁLEZ:** I don't know, Your Honor.

11 Come up.

12 **THE COURT:** Was it our fault or was it -- whose fault
13 was it? Because this cannot happen again.

14 **MR. GONZÁLEZ:** I'm going to have our trial tech answer
15 the question.

16 **MR. GUEVARA:** Your Honor, the Clerk has master control
17 on what goes up and down on the screens. So I believe there
18 might have been a, you know, malfunction on what she was
19 pressing to turn off.

20 **THE CLERK:** There was a delay --

21 **THE COURT:** What happened?

22 **THE CLERK:** There was a little bit of a delay whenever
23 I would click on his side.

24 **THE COURT:** How long a delay?

25 **THE CLERK:** About a two-second delay.

1 **THE COURT:** Well, then we waited, like, two minutes.
2 So --

3 **THE CLERK:** But then --

4 **THE COURT:** What? What?

5 **THE CLERK:** Then I tried the other side --

6 **THE COURT:** Here is what I want you to do -- let's get
7 your technical person up here, too.

8 **MR. PERLSON:** This is Mr. Ryan Fisher, Your Honor.

9 **THE COURT:** Mr. Fisher.

10 What's your name?

11 **MR. GUEVARA:** Andrew Guevara, for the record, Your
12 Honor.

13 **THE COURT:** Listen, here's the deal. You three -- and
14 I'm including the Deputy Courtroom Clerk -- have got to be
15 pronto, no delays.

16 And whenever the other side wants to borrow a slide that
17 you showed when Mr. González was doing his cross, it's only
18 fair. He had every right to ask you to put that back up there.
19 You can't play games and say, "Oh, sorry. Too late." No games
20 are going to be played that way.

21 So if there was a glitch here, you three, including the
22 Courtroom Deputy Clerk, you've got to figure out what the
23 protocol is going to be so that it doesn't happen again.
24 That's point one.

25 Point two is, there's too much of a delay between

1 Mr. González saying we're going to show the deposition, and
2 then 45 seconds later it comes on the screen. The time of this
3 jury is too important. It's got to be one second. Two
4 seconds, I can stand. But if it's going to be longer than
5 that, then forget the impeachment.

6 Same thing on your side. You've got to be instant.

7 All right. Enough on that. Thank you. I know you'll do
8 a good job.

9 **MR. GUEVARA:** Thank you, Your Honor.

10 **THE COURT:** I have a different question now about the
11 substance.

12 I thought I had made a ruling that that Gorilla Circuits
13 thing, that you could not suggest for one second that that was
14 a trade secret, that spacing. Didn't I have -- I went down and
15 I -- didn't I have an order on that about eight months ago?
16 What am I thinking of?

17 **MR. GONZÁLEZ:** Your Honor, I recall the Court
18 expressing great skepticism about the notion that it was a
19 trade secret. I don't recall there being an actual order to
20 that effect.

21 **THE COURT:** No, we went through all of the -- we went
22 through all of the directions the diodes were placed and the
23 idea that -- and it turned out those two sets of diodes were so
24 far off that there's no way it could be a trade secret. I
25 mean, at least -- no, maybe it could be a trade secret, but

1 there was no way you were doing the same thing.

2 I could have sworn that I've made that ruling.

3 **MR. GONZÁLEZ:** I recall -- Your Honor, I believe what
4 the Court is referring to is Trade Secret 96. That may be what
5 the Court is recalling.

6 **THE COURT:** I don't remember the numbers.

7 **MR. GONZÁLEZ:** But, in any event, we --

8 **THE COURT:** But that's out of the case, isn't it?
9 Didn't I knock 96 out?

10 **MR. GONZÁLEZ:** Yes. Yes, you did.

11 **THE COURT:** All right. If you suggest to the jury
12 that there is some trade secrets in that Gorilla thing, I'm
13 going to be upset with you.

14 **MR. PERLSON:** Your Honor, I don't think I did. In
15 fact, it was actually -- it was -- it was them who was
16 comparing it. It was Mr. González on his examination who was
17 comparing it to the public document and suggesting that it was
18 the same as the public document.

19 **THE COURT:** Well, but this was after you laid all
20 kinds of suspicious things on the jury, saying, "Oh, it's got
21 three flat sides. It's got a curve. My God, it's got a curve
22 and three flat sides."

23 I mean, you were the one that was suggesting they were
24 copying your design.

25 **MR. GONZÁLEZ:** It was worse than that, Your Honor.

1 They --

2 **MR. PERLSON:** Well, wait a minute, Your Honor --

3 **THE COURT:** Wait, wait.

4 **MR. PERLSON:** I should be able to respond.

5 **THE COURT:** Yes, you should.

6 **MR. PERLSON:** First of all, Your Honor, what we have
7 heard in this case -- and you heard it in Mr. González's
8 examination of Mr. Brown. They went through in detail saying
9 that this is all just a competitive thing; that this isn't
10 about substance and that the timing of this, that we've known
11 about this for months.

12 And then right at -- you know, and then, in February,
13 we're finally fed up and that we feel that we need to bring a
14 trade secret action.

15 The jury needs to know that we found out about this and
16 had the first, you know, tangible evidence from Uber that they
17 were copying our stuff. And it was the basis of the board and
18 the receipt of that Gorilla email that did that. And the fact
19 that -- and the story behind it and how it happened directly
20 rebuts the narrative that they have been pushing the last day.

21 I have no way of telling that story without --

22 **THE COURT:** All right. I accept what you say is fair
23 game, but I think you -- you went further and insinuated into
24 that story that -- that there was copying of that particular
25 PCB board and you put the transmit board up there to show the

1 similarities.

2 To me, that suggested something that had been knocked out
3 of the case by the judge.

4 **MR. GONZÁLEZ:** Your Honor, I have a suggestion. And
5 this is what the problem was, and I probably should have
6 objected.

7 The problem is, they shielded it from the public. That's
8 the problem. They didn't show the public that email they got
9 from Gorilla suggesting, as you've said throughout, that we've
10 got to shield stuff from the public that's a secret. That's my
11 concern.

12 So here is what I suggest. I think we should show the
13 side-by-side to the public right now, and I think Your Honor
14 should tell the jury that, you know, in hindsight the public
15 should have been allowed to see what was on the screen during
16 the examination of Mr. Grossman. And that's all.

17 **THE COURT:** Oh, we're not going to do that yet. But
18 we -- I'm going to see how this develops.

19 **MR. PERLSON:** Your Honor --

20 **THE COURT:** You know, you have been attached to that
21 Gorilla Circuits email. You have squirmed left and right
22 trying to figure out some way to build your case around it.
23 And even though 96 got thrown into oblivion, you're still
24 trying to find some way to screw that into the case and it has
25 nothing to do with any trade secret that's in play.

1 So I -- I'm a little upset about that, but I'm not going
2 to make some ruling now. We're going to see how it develops
3 further. Maybe I will do a curative instruction in due course.

4 **MR. GONZÁLEZ:** Your Honor, can we show a side-by-side
5 to the public?

6 **THE COURT:** No.

7 **MR. GONZÁLEZ:** Okay. Your Honor --

8 **THE COURT:** We're moving on. We're moving on.

9 **MR. GONZÁLEZ:** Yeah, I have a housekeeping matter.

10 Would Your Honor or Your Honor's Clerk, or both of you,
11 like copies of these witness binders? I don't want to fill you
12 with binders, but --

13 **THE COURT:** Actually, I don't want them.

14 **MR. GONZÁLEZ:** Okay.

15 **THE COURT:** I've -- it just piles up up here. I don't
16 have space. I don't have time to read all these things. I
17 look at it on the screen as it comes up. That's what I have to
18 do.

19 **MR. GONZÁLEZ:** All right.

20 **THE COURT:** And then if I need to see a hard copy,
21 which I have once, I'll ask you for it.

22 **MR. GONZÁLEZ:** Thank you.

23 **THE COURT:** All right. What's your housekeeping?

24 **MR. VERHOEVEN:** The next witness we were going to call
25 is Mr. Bares.

1 **THE COURT:** Right.

2 **MR. VERHOEVEN:** Your Honor has ruled on --

3 **THE COURT:** I gave you back -- did you give them
4 the --

5 **MR. VERHOEVEN:** Yes. We have those and we've
6 incorporated those, but I'm told that there wasn't any ruling
7 on whether the stuff we thought was -- should be sealed,
8 appropriately should be sealed.

9 My request would just be --

10 **THE COURT:** However you presented it to me, I'm going
11 to let you go with it as public, and then the part you gave me
12 as proposed seal. I haven't got the time. I've just got to
13 trust you to do it right.

14 **MR. VERHOEVEN:** Okay. So we will seal that little bit
15 at the end, or we could do it before we bring everybody in.

16 **THE COURT:** I wish you two would work the sealed part
17 out.

18 Now, the next part, is it going to be public so that --

19 **MR. VERHOEVEN:** So it's Mr. Bares and so he's got a
20 little bit that's, we say, sealed. And then the vast majority
21 is public.

22 So we could do the sealed at the end or the beginning.
23 It's up --

24 **THE COURT:** Will it flow right if you do it --

25 **MR. VERHOEVEN:** We could do it later on when there's

1 another sealed portion.

2 **THE COURT:** Why don't we do this. Do the public part
3 and then go to your next public witness. And I will do a
4 placeholder for the jury and say, for their convenience, we're
5 not going to clear the courtroom. And we'll come back and pick
6 up a short piece of under-seal material from Mr. Bares.

7 **MR. VERHOEVEN:** Thank you, Your Honor.

8 **THE COURT:** And then you can do that whenever --
9 whenever it's convenient for the public.

10 **MR. VERHOEVEN:** I appreciate that.

11 **THE COURT:** Yes, sir. What can I do for you?

12 **MR. RABIN:** That's fine, Your Honor. I was responding
13 to the Bares issues.

14 **THE COURT:** Fine. Thank you. We will take 15
15 minutes.

16 (Whereupon there was a recess in the proceedings
17 from 11:08 a.m. until 11:20 a.m.)

18 **THE COURT:** Next witness, please.

19 **MR. VERHOEVEN:** Your Honor, Waymo calls John Bares by
20 video testimony.

21 **THE COURT:** All right.

22 **MR. VERHOEVEN:** Just by way of background, Your Honor,
23 Mr. Bares was Uber's founder and director of Uber's Advanced
24 Technology Center.

25 **THE COURT:** What's the date of the deposition, please?

1 **MR. CARMODY:** And I want to clarify something. He
2 wasn't Uber's founder.

3 I think that's what you said.

4 **MR. VERHOEVEN:** He was the founder of the Advanced
5 Technology Center. That's the autonomy effort.

6 **MR. CARMODY:** He wasn't the founder. He was employed
7 there.

8 **THE COURT:** All right. So, remember, this is a great
9 example. What the lawyers say is never evidence. And you see
10 right here, they can't even agree on something.

11 So that's -- it's probably going to be in the testimony
12 that we're going to hear, so that will help set the stage. And
13 if it doesn't there, then somebody else will testify to
14 whatever the correct answer is.

15 I would like to know the date of the deposition.

16 **MR. JUDAH:** Your Honor, there were two depositions,
17 June 19th and --

18 **THE COURT:** June 19th, last year. And what else?

19 **MR. JUDAH:** I'm sorry. June 16th, 2017 and
20 August 11th, 2017.

21 **THE COURT:** Very good. Thank you.

22 Okay. Now, we're about to hear something you haven't seen
23 yet, which is a witness is going to be appearing and testifying
24 under oath by video, but it's all in the can. This is an old
25 deposition from last year -- not old, but last year. It's not

1 videotaped live from the east coast. No. This is something
2 that's already been taken.

3 The lawyers have trimmed it down to just what you need to
4 hear. And so it may jump around a little bit, but it counts
5 just as much as testimony from the stand. It is under oath,
6 and both sides had an opportunity to examine the witness.

7 So I think it's at least fair to say that Mr. Bares,
8 B-a-r-e-s, is affiliated with the Uber side of the case.

9 All right. Now, roll the tape.

10 **MR. VERHOEVEN:** Just a question. Is there a switch to
11 turn down the lights a little bit?

12 **THE CLERK:** Turn down the rights? I can.

13 **THE COURT:** I think we can turn it down about halfway
14 in order to help the jury see better.

15 **MR. VERHOEVEN:** Thank you, Your Honor.

16 **THE COURT:** Sure.

17 About halfway. It's kind of like the Grand Lake Theater
18 in Oakland.

19 (Laughter.)

20 **THE COURT:** All right.

21 **JOHN BARES,**
22 called as a witness for the Plaintiff herein, testified via
23 videotaped deposition played in open court, not reported.

24 **THE COURT:** Is that it?

25 **MR. JUDAH:** That is, Your Honor. And we would like to

1 move into evidence certain exhibits from that testimony.

2 **THE COURT:** All right. Go ahead.

3 **MR. JUDAH:** Exhibit Nos. 170.

4 **THE COURT:** Any objection?

5 **MR. RABIN:** Not beyond those that were in the clip
6 sheet that we supplied to Your Honor.

7 **THE COURT:** 170 is in. What's next?

8 **MR. JUDAH:** TX-171.

9 **MR. RABIN:** No objection.

10 **THE COURT:** In.

11 **MR. JUDAH:** TX-367.

12 **MR. RABIN:** No objection.

13 **THE COURT:** In.

14 **MR. JUDAH:** TX-433.

15 **MR. RABIN:** No objection.

16 **THE COURT:** In.

17 **MR. JUDAH:** TX-459.

18 **MR. RABIN:** Not beyond those we provided to Your
19 Honor.

20 **THE COURT:** I don't know what that means, but --

21 **MR. RABIN:** It's in the clip sheet.

22 **THE COURT:** -- 459 is in.

23 You're going to have to -- I don't know what you're
24 referring to.

25 Okay. Next.

1 **MR. JUDAH:** TX-662.

2 **MR. RABIN:** No objection.

3 **THE COURT:** In.

4 **MR. JUDAH:** TX-663.

5 **MR. RABIN:** No objection.

6 **THE COURT:** In.

7 **MR. JUDAH:** TX-668.

8 **MR. RABIN:** No objection.

9 **THE COURT:** In.

10 **MR. JUDAH:** TX-674.

11 **MR. RABIN:** No objection.

12 **THE COURT:** In.

13 **MR. JUDAH:** TX-678.

14 **MR. RABIN:** No objection.

15 **THE COURT:** In.

16 **MR. JUDAH:** And TX-682.

17 **MR. RABIN:** No objection.

18 **THE COURT:** Thank you. In.

19 (Trial Exhibits 170, 171, 367, 433, 459, 662, 663,
20 668, 674, 678, 682 received in evidence.)

21 **THE COURT:** All right. I wanted to give each side a
22 30-second opportunity to explain to the jury who NewCo was and
23 who -- is it Tyto? -- that you all assume the jury has a
24 laser-sharp memory and remembers every little detail. And it's
25 even harder for me after all this time to keep all this

1 straight. So you get 30 seconds to explain to the jury.

2 This is not evidence, ladies and gentlemen. Not evidence.
3 Zero, zero, zero. However, it will be helpful to you for the
4 lawyers to give you a refresher course on who NewCo was and who
5 Tyto was.

6 Time is ticking. One, two. Please go ahead.

7 **MR. VERHOEVEN:** Okay. Thank you, your Honor.

8 So the next witness you're going to hear is Mr. Kalanick,
9 and I'll to ask him about this, but NewCo is the code name that
10 for part of the time Uber was using to describe their efforts
11 to hire Mr. Levandowski and was referring to a company that the
12 evidence will show was being -- didn't exist yet and was going
13 to be formed in the future. And so that's why they called it
14 NewCo.

15 The other entity --

16 **MR. RABIN:** Tyto.

17 **MR. VERHOEVEN:** -- Tyto is a company --

18 **THE COURT:** Well, can you -- was NewCo what became
19 Ottomotto?

20 **MR. VERHOEVEN:** That's right.

21 **THE COURT:** All right. Why don't you say that?

22 **MR. VERHOEVEN:** I'm sorry, Your Honor.

23 **THE COURT:** All right.

24 **MR. VERHOEVEN:** This is a company that eventually
25 became Ottomotto, which is a defendant in this case.

1 **THE COURT:** All right. Thank you.

2 Your turn.

3 **MR. RABIN:** Thank you.

4 So what you will hear later on in the trial is NewCo was
5 an idea for a new company that could have been developed into
6 several different kinds of companies.

7 As you heard, one of the original ideas of NewCo was an
8 independent company that would simply license its technology to
9 Uber independently as a separate entity, and that was option --
10 one of the options.

11 There was another option where they would work with
12 Google. There was another option where they would work with
13 Uber.

14 And in all of these iterations, the NewCo name was simply
15 the idea for these various options of forming a new company
16 that Mr. Levandowski and Mr. Ron were working on.

17 **THE COURT:** And how about Tyto?

18 **MR. RABIN:** Tyto?

19 **THE COURT:** There was a reference -- yes. There was a
20 reference up there to "T-Y-T-O."

21 **MR. RABIN:** Tyto is a separate company that was in the
22 laser space. And eventually Ottomotto, which was the entity
23 that was ultimately formed, Ottomotto purchased Tyto later in
24 the summer of the 2016 time period.

25 **THE COURT:** All right.

1 **MR. PERLSON:** Your Honor, can I just add one thing
2 briefly to that for Tyto? Is that it was a -- the evidence
3 will show that Tyto was a company that was controlled by
4 Anthony Levandowski, and that had been started even before Otto
5 had existed, and was started by and controlled by
6 Mr. Levandowski while he was working at Google.

7 **MR. RABIN:** Yeah. That's -- we agree. He formed Tyto
8 actually while he was a Google employee. And while he was a
9 Google employee, he formed this company and continued to have
10 this company. You'll hear evidence as to whether Google knew
11 about it throughout the course of the trial.

12 **THE COURT:** All right. That -- none of that's
13 evidence, but it helps you frame the issues.

14 All right. So I plan to push on now with the next
15 witness, unless one of the members of the jury needs a restroom
16 break. If so, raise your hand.

17 (No response.)

18 **THE COURT:** I'm not seeing a hand go up.

19 Counsel, you -- we used up, I think, 34 minutes on that,
20 and you need to tell me how it breaks down after the jury
21 leaves for the day.

22 All right. Please call your next witness.

23 **MR. VERHOEVEN:** Thank you, Your Honor. Waymo calls
24 Travis Kalanick.

25 **THE COURT:** All right.

1 **THE COURT:** Will the witness please come to the
2 witness stand?

3 Okay. Welcome. Please stand somewhere in there. Raise
4 your right hand to take an oath to tell the truth, please.

5 **TRAVIS KALANICK,**
6 called as a witness for the Plaintiff, having been duly sworn,
7 testified as follows:

8 **THE WITNESS:** I do.

9 **THE CLERK:** Thank you. State your name for the record
10 and spell your last name for the record.

11 **THE WITNESS:** Okay. My name is Travis Kalanick.

12 **THE COURT:** Okay. Welcome.
13 First question.

14 **MR. VERHOEVEN:** May I approach to give the witness an
15 exhibit binder?

16 **THE COURT:** Please do.
17 (Tendered binder to witness.)

18 **DIRECT EXAMINATION**

19 **BY MR. VERHOEVEN**

20 **Q.** Good afternoon, Mr. Kalanick.

21 **A.** Good afternoon.

22 **Q.** You were a founder of Uber; correct?

23 **A.** That is correct.

24 **Q.** And you're currently on Uber's Board of Directors?

25 **A.** That is correct.

1 Q. And you are a former CEO of Uber; correct?

2 A. That is correct.

3 Q. You began your tenure as CEO of Uber in 2010?

4 A. Yes.

5 Q. And you resigned as the CEO in June of last year?

6 A. That is correct.

7 Q. Uber's business is ride-sharing; correct?

8 A. Yes.

9 Q. You agree that autonomous vehicles are going to be safer
10 than human-driven vehicles; right?

11 A. Yes.

12 Q. Autonomous vehicles are also going to be cheaper than
13 human-driven vehicles; agree?

14 A. Eventually, yes.

15 Q. And it's your belief that in order for Uber to exist in
16 the future, it will need to be a leader in the autonomous
17 vehicle space; correct?

18 A. Yes.

19 Q. Please turn in your binder -- your binder is organized in
20 numerical order with TX numbers in it.

21 A. Okay.

22 Q. So please turn in your binder to TX-0291.

23 A. Okay.

24 Q. This is a transcript of an interview with *Bloomberg*
25 *Business Week* that you attended on July 25th, 2016; correct?

1 **A.** It appears to be so, yes.

2 **MR. VERHOEVEN:** Your Honor, I move Exhibit 0291 into
3 evidence.

4 **MS. DUNN:** Your Honor, this is a transcript of a news
5 article, so we object on hearsay ground.

6 **THE COURT:** Sustained so far.

7 **BY MR. VERHOEVEN**

8 **Q.** And you see it says "TK" and there's a back-and-forth and
9 one of the responses is "TK"?

10 **A.** Yes, I do.

11 **Q.** Is that your name?

12 **A.** Yes.

13 **Q.** And did you give this interview?

14 **A.** Yes, I did.

15 **MR. VERHOEVEN:** I move into evidence again.

16 **THE COURT:** That's not enough. You've got to ask him
17 if it accurately reported what he -- what he said in the
18 interview.

19 **BY MR. VERHOEVEN**

20 **Q.** Have you reviewed this transcript before?

21 **A.** Not in detail.

22 **Q.** Did you look at it at your deposition?

23 **A.** Briefly.

24 **Q.** Are you aware -- do you think that this transcript
25 accurately reflects your answers?

1 A. I don't know.

2 Q. Well, let's go to the specific questions.

3 MR. VERHOEVEN: Can we go to page -- just one second,
4 your Honor.

5 (Brief pause.)

6 MR. VERHOEVEN: I apologize, Your Honor. I don't
7 think this will be confidential.

8 BY MR. VERHOEVEN

9 Q. If you'd direct your attention to the first page.

10 A. Yeah.

11 Q. And you see the -- there's an entry that says "Max colon"?

12 A. Yeah. There -- there's several of them.

13 Q. The top one?

14 A. Yeah.

15 Q. "Max colon," do you see that?

16 A. Yes, I do.

17 Q. And do you see the question he asks?

18 A. Yes I do.

19 Q. And please read your answer.

20 A. "At a high level" --

21 Q. No. You can read it to yourself, because there's an
22 objection to the exhibit.

23 A. Sorry.

24 (Witness complied.)

25 A. Yes, I've read it.

1 Q. Is that statement accurate?

2 A. I believe it would be accurate; correct.

3 Q. We direct your attention to the lower place in the page
4 that starts with "The future," your answer that starts with
5 "The future."

6 A. Okay.

7 Q. Would you please read that?

8 (Witness complied.)

9 A. Okay.

10 BY MR. VERHOEVEN

11 Q. Is that an accurate statement as well?

12 A. I believe it to be accurate, yes.

13 MR. VERHOEVEN: Your Honor, I move to admit at least
14 these answers that he's testified, so I can show them to the
15 jury, into evidence.

16 THE COURT: All right. That's -- that's -- I'm going
17 to allow that, but what's your -- what's your objection to
18 that?

19 MS. DUNN: We don't object to to -- to counsel asking
20 him about the statements in the article. That's no problem.
21 We object to admission of the news article, and it's still a
22 news article.

23 THE COURT: Well, here's what we're going to do. How
24 long are these answers?

25 MR. VERHOEVEN: They're short, Your Honor, but this

1 is -- all right. I mean --

2 **THE COURT:** Look. Just do this. Read it out loud --

3 **MR. VERHOEVEN:** Well, I can just play it on the board
4 for the first page. I don't think there's an objection to
5 that, is there?

6 **THE COURT:** If everything on the first page has been
7 vouched for by the witness, then you can do that, too.

8 **BY MR. VERHOEVEN**

9 **Q.** Mr. Kalanick, can you read the first entry that I asked
10 you to look at for the record?

11 **A.** Out loud?

12 **Q.** Out loud.

13 **A.** Okay.

14 "At a high level, Uber is racing towards the
15 future, doing everything we can to catch up to Google
16 on autonomy, something we have been working on since
17 late 2014. Self-driving, when applied to
18 ride-sharing, is the future. If only one entity is
19 really far ahead, then Uber won't be a part of that
20 future. The minute it was clear that Google was
21 getting into the ride-sharing space, we realized we
22 needed to make sure there was an alternative, because
23 if there is not, we will be out of business."

24 **Q.** And that's an accurate statement as far as you're
25 concerned?

1 **A.** Yes.

2 **Q.** And you stand by that today?

3 **A.** I do.

4 **Q.** Can you please read into the record the second excerpt I
5 asked you to look at earlier?

6 **A.** Absolutely. Okay.

7 "The future is driverless and we have to be part
8 of that future. We see lots of people talking about
9 driverless ride-sharing, Tesla the other day. For us
10 it's existential. We are the ride-sharing platform of
11 choice at the moment, but if we want to continue to
12 be, we have to be part of the future and keep
13 innovating."

14 **Q.** Now, you -- is that also an accurate statement?

15 **A.** Yes, it is.

16 **Q.** And you stand by that today?

17 **A.** I do.

18 **Q.** Can you explain to the jury, what does the word
19 "existential" mean?

20 **A.** It's similar to this part where it says we would be out of
21 business, is that if you're -- if you're running a technology
22 company or you are working at a technology company and you are
23 not making new innovations, new things that people want, then
24 you become part of the past.

25 **Q.** Meaning, you would cease to exist?

1 **A.** Yeah. Yeah. Or it could -- it can take a long time, but
2 eventually, yes.

3 **Q.** Turn in your binder to TX-0387.

4 (Witness complied.)

5 **A.** Okay.

6 **Q.** Do you recognize this is an email from yourself dated
7 August 16th to Rachel Whetstone and some others?

8 **A.** Okay. I see that, yes.

9 **MR. VERHOEVEN:** Move to admit TX-0387, Your Honor.

10 **MS. DUNN:** No objection.

11 **THE COURT:** Received in evidence.

12 (Trial Exhibit 0387 received in evidence.)

13 **MR. VERHOEVEN:** Please publish it on the screen.

14 Can we pull out about the top -- yeah, about the quarter,
15 please.

16 (Document displayed.)

17 **BY MR. VERHOEVEN**

18 **Q.** So that's your name on the top. And I want you to look
19 at --

20 **MR. VERHOEVEN:** That's the wrong part. Go back,
21 please.

22 There it is, right down at the bottom. It starts with
23 "autonomous transportation."

24 (Document displayed.)

25 **MR. VERHOEVEN:** There it is.

1 BY MR. VERHOEVEN

2 Q. So you wrote this email, right?

3 A. I believe so. I'm still trying to find this part.

4 Q. It's at the bottom.

5 A. Okay. Yeah, yeah, yeah.

6 Q. It's on the screen there, too?

7 A. Yep. Yeah, I got it, yeah.

8 Q. And you wrote:

9 "Autonomous transportation is very possibly a

10 winner-take-all and, thus, existential for Uber."

11 Do you see that?

12 A. Yes.

13 Q. What does "winner-take-all" mean?

14 A. Well, it's -- it's similar to, like, Google and the search
15 business, is that you get certain network effects around
16 particular technology and because it's -- it's the leader, it
17 actually can provide the system and the service better than
18 anything else -- anybody else.

19 Q. And what does it mean to say "winner-take-all" then? Does
20 that mean the other -- the other non-winners lose?

21 A. Not necessarily. Again, I think the best example in
22 technology would be the search business, when you have Google
23 versus Bing in Microsoft, is that Microsoft maybe has
24 30 percent of the search queries, but they -- but they cannot
25 provide it economically enough, so they lose money generally as

1 a business. Whereas, Google makes all -- all of the profits.

2 Q. I'm going to ask you some questions about the Pittsburgh
3 ATC team. Okay?

4 A. Yeah.

5 Q. Explain to the jury what ATC stands for.

6 A. It means Advanced Technology Center.

7 Q. And that -- it was your idea to start Uber's self-driving
8 car program in late 2014; right?

9 A. Not exactly. It was actually Jeff Holden's idea, but one
10 that I supported fully.

11 Q. You agreed that that would be something that you fully
12 supported?

13 A. Absolutely, yes.

14 Q. And as of January 1, 2015 is it correct that the project
15 was still being put together?

16 A. Can you repeat the question? I'm sorry.

17 Q. As of January 1, 2015, the project, the ATC group, was
18 still being put together; correct?

19 A. No, I wouldn't say that. It was put together in early --
20 sort of late 2014, early 2015.

21 Q. I would like to play from your deposition --

22 MR. VERHOEVEN: This is July 27th, 2017, Your Honor,
23 Page 163, 8 through 15.

24 THE COURT: All right. Please roll the tape.

25 (Videotape played in open court, not reported.)

1 **BY MR. VERHOEVEN**

2 **Q.** Many of the early employees at the Pittsburgh center were
3 formerly associated with Carnegie Mellon University?

4 **A.** That's correct.

5 **Q.** Sir, you were unhappy with the progress and the pace of
6 development being achieved at the Pittsburgh center; isn't that
7 true? You wanted the group to move faster?

8 **A.** At some point that is definitely true. I think that
9 there's a date, sort of, when that occurred, but yes.

10 **Q.** And by the end of 2015 you agree Uber's autonomous vehicle
11 program was highly dependent on third-party vendors for its
12 lasers; correct?

13 **A.** That is correct, yes.

14 **Q.** It had a project to develop an in-house LiDAR system; is
15 that right?

16 **A.** I believe that to be true, yes.

17 **Q.** But those laser prototypes were at that time really
18 expensive and too big to be commercially viable; right?

19 **A.** It's probably true. I don't know about the big part, but
20 certainly the expensive part.

21 **Q.** Let's play from your deposition dated October 2, 2017,
22 Page 394, Lines 22 through 25.

23 (Videotape played in open court, not reported.)

24 **BY MR. VERHOEVEN**

25 **Q.** Given this lack of progress, you needed someone that had

1 experience in transitioning from professor-like prototypes to
2 products that would be cost efficient, products that could be
3 mass produced; right?

4 **A.** Yes. Though I wouldn't characterize it as lack of
5 progress. We definitely needed to get a commercial orientation
6 in the effort.

7 **Q.** You had a need to get someone who had experience in
8 transitioning from a professor-like prototype to products that
9 would be cost efficient and could be mass produced; right?

10 **A.** That is correct.

11 **Q.** Now, you agree Google had been working on autonomous
12 vehicles for much longer than Uber?

13 **A.** Yes.

14 **Q.** Since 2009; right?

15 **A.** Correct. Or I -- I don't know the exact date when Google
16 started working on it, but certainly earlier than us, a lot
17 earlier.

18 **Q.** And you agree that Oogle -- "Oogle," sorry.

19 You agree that Google is the industry leader in autonomous
20 vehicles; right?

21 **A.** I think that's the general perception right now.

22 **Q.** Okay.

23 **A.** It's a fair statement.

24 **Q.** You believe they are in the lead; right?

25 **A.** Yes.

1 Q. And they were in the lead in 2015 and 2016; right?

2 A. Correct.

3 Q. Now, there came a time in the fall of 2015 when your
4 company, Uber, approached Mr. Levandowski; right?

5 A. Yes.

6 Q. And there is a fellow named Cameron Poetzscher, I believe
7 is how you pronounce it; is that right?

8 A. Yes.

9 Q. Tell the jury who he was in that time frame, the fall of
10 2015?

11 A. He worked on our business development team and corporate
12 development team, transactions ranging from investment to
13 strategic -- strategic deals that we're doing he was involved
14 in, including something like an acquisition.

15 Q. Mr. Poetzscher was primarily driving the train on the Uber
16 side for earlier discussions with Mr. Levandowski; correct?

17 A. I'm not sure if he was leading those discussions or not.

18 Q. Let's play from your deposition dated July 27, 2017,
19 Page 141, Line 25, through 142, Line 7.

20 (Videotape played in open court, not reported.)

21 Q. For the record, Mr. Poetzscher was vice president of
22 corporate development at Uber at the time; correct?

23 A. That sounds right.

24 Q. Now, you were also involved in discussions with your
25 management team about this negotiation with Levandowski;

1 correct?

2 A. I think I got involved in those discussions in late '15,
3 maybe December time frame.

4 Q. So, yes, you were also involved?

5 A. Yes.

6 Q. Now, in your initial discussion with Mr. Levandowski, he
7 told you that he wanted to do trucking, not cars; right?

8 A. Yeah. He said he wanted to do -- I think his initial
9 plans were trucking and lasers.

10 Q. And then in 2015, you and Mr. Levandowski discussed the
11 purchase by Uber of a NewCo; right?

12 A. Real quick, could you say the date again? I didn't hear
13 the first part.

14 Q. In 2015.

15 A. It's -- I'm not sure if it was end of December 2015 or
16 early 2016, but in that time period.

17 Q. You discussed, in that time period, the purchase by Uber
18 of a nonexistent company, didn't you?

19 A. He was very adamant -- yes. So the answer is yes. He was
20 very adamant about starting a company and we were very adamant
21 about hiring him.

22 Q. So the answer to my question that you discussed a purchase
23 by Uber of a nonexistent company, a company that did not exist,
24 is yes; correct?

25 A. Correct.

1 Q. Thank you.

2 So I think you've already said this, but you and
3 Levandowski had conversations in late December about him
4 leaving Google and coming over to your team; right?

5 A. That's correct, yes.

6 Q. Turn in your binder, please, to TX-8002.

7 (Witness complied.)

8 A. And could you say that number one more time?

9 Q. Sure. 8002.

10 A. Okay.

11 Q. You recognize this as an Uber visitor badge from
12 Mr. Levandowski?

13 A. Yes.

14 MR. VERHOEVEN: Your Honor, I move TX-8002 into
15 evidence.

16 MS. DUNN: No objection.

17 THE COURT: Thank you. Received.

18 (Trial Exhibit 8002 received in evidence.)

19 MR. VERHOEVEN: Put it on the screen, please.

20 And blow it up.

21 (Document displayed.)

22 BY MR. VERHOEVEN

23 Q. Is that Mr. Levandowski's picture?

24 A. That's -- it looks like him.

25 Q. And it says here that he's visiting on December 20th,

1 2015; right?

2 A. Yes, it does.

3 Q. Mr. Levandowski was there to see you, wasn't he?

4 A. It appears by the badge, yes.

5 Q. And you met with him on that date?

6 A. It's very possible. I don't remember the specific
7 meeting, but it's very, very possible.

8 Q. What did you say to him, what did he say to you at this
9 meeting?

10 A. I don't remember.

11 Q. You don't remember?

12 A. No.

13 Q. In the fall of 2015, John Bares was an executive at Uber;
14 right?

15 A. That's correct.

16 Q. And at that time, Mr. Bares was in charge of Uber's
17 driverless car program; right?

18 A. Yes.

19 Q. And that's the program that was referred to internally as
20 the ATC program; correct?

21 A. Correct.

22 Q. Mr. Bares was one of the original members of the team in
23 Pittsburgh; correct?

24 A. Yes.

25 Q. And in December of 2015, he was running the group in

1 Pittsburgh; right?

2 **A.** That's correct.

3 **Q.** Now, you -- generally, you had meetings with Mr. Bares in
4 December of 2015 to discuss a potential deal with
5 Mr. Levandowski where Uber would purchase a NewCo; right?

6 **A.** I had a number of meetings with him, yes.

7 **Q.** Turn in your binder to TX-170, please.

8 (Witness complied.)

9 **MR. VERHOEVEN:** This is in evidence now, Your Honor?

10 **THE COURT:** Yes, it's already in.

11 **MR. VERHOEVEN:** May we put it up on the screen? It's
12 TX-170.

13 (Document displayed.)

14 **BY MR. VERHOEVEN**

15 **Q.** And I'll represent to you that these are Mr. Bares' notes.
16 I'll direct your attention to the first page at the
17 bottom.

18 **MR. VERHOEVEN:** Can we blow that up?

19 (Document enlarged.)

20 **BY MR. VERHOEVEN:**

21 **Q.** You can see it on the screen, sir?

22 **A.** I sure do.

23 **Q.** Okay. You see that entry, quote, meeting with TK, close
24 quote?

25 **A.** I do see that.

1 Q. "TK" is you; right?

2 A. Yes.

3 Q. And you met with Mr. Bares on December 22, didn't you?

4 A. I don't remember a specific date for a meeting.

5 Q. Well, do you have any reason to believe his notes are
6 wrong?

7 A. No. I don't see a date on the notes, though.

8 Q. Okay. Direct your attention to -- just one second.

9 Direct your attention to the following page, which is a
10 continuation. Do you see it's a continuation of his notes from
11 that meeting?

12 A. Okay.

13 MR. VERHOEVEN: And can we put the -- where is it?
14 From the very top "TK: What we want," and bring that up?
15 (Document displayed.)

16 BY MR. VERHOEVEN

17 Q. "TK" is you; correct?

18 A. Yes.

19 Q. And Mr. Bares' notes is saying that you're telling the
20 team what you want; right?

21 A. Looks like it, yes.

22 Q. And this is in reference to the NewCo deal, isn't it?

23 A. I don't know.

24 Q. Do you see Cam says "pay at milestones"?

25 A. I see that, yes.

1 Q. And milestones are part of the deal; right?

2 A. I mean, milestones are definitely part of the Otto deal,
3 yes.

4 Q. And --

5 A. These aren't my notes, so I --

6 Q. And if you look at the list here, what they're talking
7 about is driverless car technology; right?

8 A. It appears to be so.

9 MS. DUNN: Objection, Your Honor.

10 And, also, I'm not sure the proper foundation has been
11 laid for this line of questioning.

12 THE COURT: Sustained.

13 BY MR. VERHOEVEN

14 Q. Did you tell the group that what you wanted was a pound of
15 flesh?

16 A. I mean, I don't know specifically. It's a term I use from
17 time to time, but I don't know.

18 Q. Do you deny that you said it?

19 A. No.

20 Q. Did you tell this group that what you wanted was
21 intellectual property?

22 MS. DUNN: Same objection, Your Honor.

23 THE COURT: That's a proper question. Overruled.

24 Please answer.

25 THE WITNESS: I don't remember saying that.

1 BY MR. VERHOEVEN

2 Q. Do you deny you said it?

3 A. No.

4 Q. "IP" there at the bottom, that stands for intellectual
5 property; right?

6 A. Most likely, yes.

7 Q. And you know what intellectual property is; right?

8 A. I do.

9 Q. Intellectual property includes trade secrets, doesn't it?

10 A. Yes.

11 Q. It's property that belongs to somebody, isn't it? That's
12 why the word "property" is in it?

13 A. That's fair.

14 Q. I direct your attention to TX-4174 in your binder.

15 A. Okay.

16 Q. You agree that you had meetings with Mr. Levandowski in
17 January of 2016; right?

18 A. Yes.

19 Q. And if you look at TX-417 -- this -- well, take a look
20 TX-4174. And specifically there's a picture on page 3.

21 A. Picture on page 3? Yeah.

22 Q. You're in the bottom right corner. That's your smile;
23 right?

24 A. I think so. I'll take it.

25 Q. So you were at the meeting that's referenced here?

1 **A.** Yeah.

2 **Q.** You see on the first page, it says, "Notes from meeting on
3 January 3." It's the second left bullet.

4 **A.** Yeah, I do.

5 **Q.** So these are notes prepared of a meeting you were at;
6 right?

7 **A.** So you're saying these are notes of the whiteboard here?
8 Is that what's going on?

9 **Q.** Yes.

10 **A.** Okay. Yeah, yeah.

11 **MR. VERHOEVEN:** Your Honor, I move TX-1474 into
12 evidence.

13 **MS. DUNN:** Objection, Your Honor. These are not
14 Mr. Kalanick's notes, and they're not an exact replication of
15 what's on the whiteboard with this picture.

16 So we have no objection to the whiteboard, but the notes,
17 there is no foundation.

18 **THE COURT:** Sustained so far.

19 **BY MR. VERHOEVEN**

20 **Q.** Take a look at the notes, sir.

21 **A.** Yes.

22 **Q.** Do those appear to you to be notes of the substance of the
23 meeting that you had?

24 **A.** I mean, there's a lot of similarities for sure. I
25 would -- I don't think it's exactly the same, but there's a lot

1 of similarities.

2 Q. I direct your attention to TX -- just a second -- 262.

3 This is an email -- are you there?

4 A. Yeah.

5 Q. This is an email from Jeff Holden. Tell the jury who Jeff
6 Holden is.

7 A. Jeff Holden is the chief product officer at Uber, and was
8 sort of the -- one of the core architects behind the creation
9 of our autonomy program.

10 Q. Now, we've already established that the meeting occurred
11 on January 3. We looked at that; right?

12 A. Yes.

13 Q. I'll represent that that was a Sunday. I went back and
14 looked.

15 Now, this is an email to you for two days later,
16 January 5th. Do you see that?

17 A. I do.

18 Q. And Mr. Holden has invited you to edit the following
19 document. Do you see that?

20 A. I do.

21 Q. And he says, quote -- well, let's --

22 MR. VERHOEVEN: I'd like to move into evidence TX-262.

23 MS. DUNN: No objection, Your Honor.

24 THE COURT: Received.

25 (Trial Exhibit 262 received in evidence.)

1 **MR. VERHOEVEN:** Bring it up on the screen.

2 (Document displayed.)

3 **BY MR. VERHOEVEN**

4 **Q.** So we see this is dated two days later, and it's directed
5 towards yourself. And it's -- the subject line is "NewCo
6 Plan - Invitation to Edit."

7 Do you see that?

8 **A.** I do.

9 **Q.** And NewCo refers to the company that doesn't exist yet
10 that you and Mr. Levandowski were planning; right?

11 **A.** No.

12 **Q.** It refers to the company that would become Ottomotto?

13 **A.** Yes.

14 **Q.** And you'll see next to the picture of Mr. Holden, he says,
15 quote:

16 "A doc I started to capture, state on the NewCo
17 discussions."

18 Do you see that?

19 **A.** I do.

20 **Q.** Now, turning back to Exhibit 4174. This is the notes that
21 Mr. Holden sent you, isn't it?

22 **A.** Hold on a second. 4174. It's just hard to thumb through
23 all this.

24 (Brief pause.)

25 **A.** Yeah, it -- I would assume so. I mean, the notes and the

1 whiteboard are similar, yes.

2 **MR. VERHOEVEN:** Your Honor, I again move to admit
3 Trial Exhibit 4174.

4 **MS. DUNN:** No objection.

5 **THE COURT:** All right. Received.

6 (Trial Exhibit 4174 received in evidence.)

7 **BY MR. VERHOEVEN**

8 **Q.** Okay. Let's go back.

9 (Document displayed)

10 **Q.** Let's go back to the first page of 4174, which is up on
11 the screen now.

12 **MR. VERHOEVEN:** If we can just pull out the bullet
13 that says "Notes from meeting on January 3."

14 (Document enlarged.)

15 **BY MR. VERHOEVEN**

16 **Q.** The screenshots of the whiteboard are what's being
17 referenced because they're attached to what the notes are
18 about; right?

19 **A.** Yeah, I don't know if these are exactly the same. I'd
20 have to compare, but --

21 **Q.** The document --

22 **A.** -- there's a lot of similarities.

23 **Q.** The document contains notes of a jam session you had with
24 Mr. Levandowski at Uber's offices on January 3rd; right?

25 **A.** That's correct.

1 Q. And during this jam session with Mr. Levandowski -- oh,
2 before I go on, you used the phrase "jam session"?

3 A. Yes.

4 Q. Can you explain, what do you mean by "jam session"?

5 A. So it's like a kind of a reference to, like, if you had a
6 jazz ensemble, they sort of -- they have ideas. They start
7 somewhere. It's ad hoc, but eventually it sort of comes
8 together into beautiful music.

9 So a jam sesh is when you get a bunch of interesting
10 creative people in a room, and they're talking about an idea,
11 and it eventually becomes something interesting and innovative.

12 Q. And your jam session on January 3rd, you were working on
13 ideas with respect to LiDAR lasers; right?

14 A. I don't remember -- or sorry. I would say no, I do not
15 remember that.

16 Q. Let's play from your deposition dated October 2, 2017,
17 Page 371, Lines 7 through 15.

18 MS. DUNN: Your Honor, I let the last one go, even
19 though I would have said it was improper impeachment.

20 I just ask for the opportunity to check whether it is
21 proper or not.

22 THE COURT: Is Mr. Kalanick still on the board of
23 directors?

24 MS. DUNN: He is.

25 THE COURT: Then it comes in under Rule 32 for any

1 purpose.

2 Objection overruled. Please play it.

3 (Videotape played in open court, not reported.)

4 **BY MR. VERHOEVEN**

5 **Q.** I direct your attention to Page 5 of the Exhibit 4174.

6 **A.** I have Page 4 but not Page 5. It says 4 of 4.

7 **Q.** Maybe I have a typo.

8 **MR. VERHOEVEN:** Could you blow up the picture, please?

9 **BY MR. VERHOEVEN**

10 **Q.** Okay. This is the right picture. I apologize,
11 Mr. Kalanick. It's page 4. And I can blow this up so you can
12 see it easier.

13 **MR. VERHOEVEN:** Can we blow up the middle of the left?
14 There you go.

15 (Document enlarged.)

16 **BY MR. VERHOEVEN**

17 **Q.** By the way, whose handwriting is this? Do you know?

18 **A.** That's mine.

19 **Q.** Your handwriting?

20 **A.** Yes.

21 **Q.** And then under Item 3 on the board, read what it says.

22 **A.** "Laser is the sauce."

23 **Q.** So during this jam session, you discussed the fact that
24 laser is the sauce; correct?

25 **A.** Yes. I think it was probably a description of our sesh,

1 yes.

2 Q. And what that meant is that lasers are the sauce to make
3 autonomous vehicles work; right?

4 A. It's close. I would say it's an important part of making
5 autonomous work. It doesn't work without it.

6 Q. Let's play from your deposition, October 2nd, 2017, Page
7 337, Lines 12 through 15.

8 It's Page 377, Lines 12 through 15, from the October 2nd,
9 2017 deposition.

10 (Videotape played in open court, not reported.)

11 **BY MR. VERHOEVEN**

12 Q. If you want to make an autonomous vehicle, you must have a
13 viable way to get lasers at scale; isn't that true?

14 A. That is correct.

15 Q. And Uber didn't have that sauce prior to the Ottomotto
16 acquisition, did it?

17 A. That's correct.

18 Q. At the time of this meeting in early January 2016,
19 Mr. Levandowski was a Google employee; right?

20 A. That's correct.

21 Q. In your meeting with him on a Sunday; right?

22 A. Yes.

23 Q. And at that time you knew generally what areas he was
24 working on at Google; right?

25 A. Generally, yes.

1 Q. Well, you knew that the work -- his work at Google was
2 focused on the hardware and sensor side of autonomous vehicles;
3 right?

4 A. Yes.

5 Q. In particular, LiDAR sensors; right?

6 A. Yes.

7 Q. This summary of your meeting was notes concerning a
8 potential acquisition of a company to be formed in the future;
9 correct?

10 A. That's correct.

11 Q. I direct your attention back to page 2 of Exhibit 4174.

12 I'm sorry, page 1.

13 A. Page 1 of?

14 MR. VERHOEVEN: There you go. Page 1 of Exhibit 4174.

15 Pull up the same box, Mr. Fisher.

16 Thank you very much.

17 (Document displayed.)

18 BY MR. VERHOEVEN

19 Q. Do you see it on the screen there, sir?

20 A. I sure do.

21 Q. And so, again, this is the notes from the January 3
22 meeting. And it says "possible outcomes."

23 Do you see that?

24 A. I do.

25 Q. And one of the possible outcomes was:

1 "Uber Super Duper, or USD, so could be Code
2 Name \$."

3 Do you see that?

4 **A.** I do.

5 **Q.** And "Code Name \$" is -- withdrawn.

6 At the meeting, you talked about Uber Super Duper, didn't
7 you?

8 **A.** Yes.

9 **Q.** And you were the one who suggested the code name
10 Project \$; right?

11 **A.** Yeah.

12 **Q.** And that's the code name you wanted to use for the
13 purchase of this yet-to-be-formed company by Uber; right?

14 **A.** That's correct. It was just short for USD.

15 **Q.** Turn in your binder, please, to Exhibit TX-262.

16 (Witness complied.)

17 **MR. VERHOEVEN:** I'm informed that's the one I had to
18 go to to get in the earlier one. So that's been covered, Your
19 Honor.

20 **BY MR. VERHOEVEN**

21 **Q.** So please turn to TX-367 in your binder.

22 **A.** 367, okay.

23 **Q.** This is in evidence, so we may put it on the screen.

24 (Document displayed.)

25 **Q.** And, again, these are Mr. Bares' notes, I'll represent to

1 you.

2 A. Okay.

3 Q. Please go to Page 40 of these notes in your binder.

4 A. Page 40. Oh, that's me. Okay.

5 MR. VERHOEVEN: And can we pull out where it -- on the
6 top left, enlarge that?

7 (Document enlarged.)

8 BY MR. VERHOEVEN

9 Q. Do you see that, sir?

10 A. Yeah, I do.

11 Q. "TK" refers to you; right?

12 A. Sure does.

13 Q. And there's a date here, January 4th of 2016; right?

14 A. Yes.

15 Q. So that's the Monday after the Sunday meeting you had;
16 right?

17 A. Yes.

18 Q. The jam session?

19 A. Correct.

20 Q. Okay. And then you'll see some notes.

21 MR. VERHOEVEN: Can we expand that down, please?

22 Thank you.

23 BY MR. VERHOEVEN

24 Q. You'll see some notes in the second column down. It says

25 "AL." Do you see that?

1 **A.** Yeah.

2 **Q.** That's Mr. Levandowski; right?

3 **A.** Yes.

4 **Q.** And then it says:

5 "TK met up with him over the weekend and is a big
6 fan."

7 Do you see that?

8 **A.** I do.

9 **Q.** That's a reference to your meeting with him on Sunday;
10 right?

11 **A.** That's correct. I mean, I would assume so.

12 **Q.** And you, indeed, were a big fan; right?

13 **A.** I was.

14 **Q.** And then if you look down at the second-to-last row being
15 in this box, it says:

16 "TK believes that lasers will be the longest pole
17 and we need access to this tech (this part is easy)."

18 Do you see that?

19 **A.** I do.

20 **Q.** By "the longest pole" you meant that if Uber didn't start
21 working on lasers and get them developed, lasers could be the
22 thing that slows down all of Uber's other autonomous vehicle
23 efforts; isn't that true, sir?

24 **A.** Yes. Something like that, yes.

25 **Q.** Two rows up it says:

1 "Lasers, data, advice are the three things."

2 Do you see that?

3 A. I do.

4 Q. Those are the three things that Uber wanted from the
5 transaction; is that right?

6 A. I'm not sure what this is referring to. I'm not sure.

7 Q. Did Uber want lasers from the transaction?

8 A. We wanted somebody who could build a team that could make
9 lasers.

10 Q. Did Uber want lasers? Did they want to buy lasers from
11 this company?

12 A. Our initial discussions were they were going to make
13 lasers and sell them to us, but my guess is we wanted somebody
14 to build a team that made lasers.

15 Q. Well, you wanted to switch the transaction over from a
16 vendor relationship to an acquisition; right?

17 A. That's correct.

18 Q. And the reason you wanted to do that was because
19 Mr. Levandowski was focused on trucking; right?

20 A. I mean, they were still doing trucking after too. It was
21 just better as an acquisition -- look, I wanted to hire
22 Anthony, and he wanted to start a company. And so I tried to
23 come up with a situation where he could -- where he could feel
24 like he started a company and I could feel like I hired him.

25 Q. You wanted to acquire him to make sure that he focused

1 most of his time on self-driving cars and not trucks; right?

2 **A.** I mean, we definitely wanted focus on self-driving cars.
3 It was the number one priority for us.

4 **Q.** I direct your attention to -- in your binder to TX-0113.

5 **A.** 0113?

6 **Q.** Correct.

7 **A.** Okay.

8 **Q.** This is an email that you received on January 9th, 2016;
9 correct?

10 **A.** Yes.

11 **MR. VERHOEVEN:** Your Honor, I'd move TX-0113 into
12 evidence.

13 **MS. DUNN:** No objection.

14 **THE COURT:** Thank you. Received.

15 (Trial Exhibit 0113 received in evidence)

16 **MR. VERHOEVEN:** Put it on the screen.

17 Can we pull out the -- make it larger, the top email. No.
18 I'm sorry. The bottom email.

19 (Document displayed.)

20 **MR. VERHOEVEN:** Thank you.

21 **BY MR. VERHOEVEN**

22 **Q.** So this portion of the email is an email from yourself to
23 Mr. Holden, Mr. Poetzsch and to Emil Michael; right?

24 **A.** Yes.

25 **Q.** And the subject is "Project \$"; right?

1 A. That is correct.

2 Q. And by that, you're referencing the project involving
3 Mr. Levandowski; correct?

4 A. That's correct.

5 Q. And then you ask, "Where we at with Anthony?" Right?

6 A. Yes.

7 MR. VERHOEVEN: And then if we could go to the email
8 above it?

9 (Document displayed.)

10 BY MR. VERHOEVEN

11 Q. Mr. Poetzsch says in response, you'll see:

12 "He came back to us with proposed milestones
13 yesterday (see attached), but no proposed dollars."
14 Do you see that?

15 A. I do.

16 Q. And what is this reference to milestones?

17 A. So he had to achieve certain things to get a certain
18 amount of equity; right?

19 So when you hire somebody, typically you'll have a vesting
20 schedule. Over time, they earn a certain amount of equity.

21 This is a situation where, yes, there was time, but there
22 were also milestones that they had to make in order to get that
23 equity.

24 Q. They wouldn't get paid until they achieved some technical
25 milestones; right?

1 **A.** So the majority of the milestones -- so the answer is yes,
2 but a majority of the milestones --

3 **Q.** Thank you, sir. I don't need you to -- the question is --

4 **A.** That's fair.

5 **Q.** -- that he wouldn't get paid until he achieved the
6 technical milestones.

7 Those technical milestones were before any other
8 milestones, weren't they?

9 **A.** Yes, but he could get paid without achieving those
10 technical milestones if the overall goal of the initiative was
11 successful.

12 **Q.** Let's direct your attention to the attachment --

13 **MR. VERHOEVEN:** Mr. Fisher, can we please -- there's
14 been a request not to publish this to the press, so I'm going
15 to respect that. Just publish it to the attorneys and the
16 jurors.

17 **THE COURT:** What number is that?

18 **MR. VERHOEVEN:** This is an attachment to Exhibit 113,
19 Your Honor.

20 **MS. DUNN:** Your Honor, it's fine with us to show the
21 gallery.

22 **MR. VERHOEVEN:** Oh, okay.

23 Let's put it on the screen.

24 **THE COURT:** Okay. Back we go.

25 **MR. VERHOEVEN:** And then can we enlarge it, the whole

1 thing.

2 That's fine.

3 (Document displayed.)

4 **BY MR. VERHOEVEN**

5 **Q.** So these are the milestones attached to the email that
6 Mr. Cameron sent you; right?

7 **A.** They may be. They very well may be.

8 **Q.** Take a look at the document.

9 **A.** Is there a number here that I can --

10 **Q.** 113.

11 **A.** 113. Okay, got it. Okay.

12 All right. So this is part of the same email. Okay.

13 **Q.** So these are the milestones attached to the email
14 Mr. Poetzsch sent you; right?

15 **A.** It appears to be so.

16 **Q.** And if you take a look at this, on the left it says,
17 "laser - long range." Do you see that?

18 **A.** I do.

19 **Q.** And then it talks about things that need to happen. "Need
20 to be a prototype in a first car." Do you see that?

21 **A.** Yes.

22 **Q.** And it has to have a 250 -- is that meter range sensing?

23 **A.** It appears to be so, yes.

24 **Q.** It has to be able to sense a pedestrian wearing a black
25 Northface jacket and jeans; right?

1 A. That's correct.

2 Q. And it has to have 400,000 points per second; right?

3 A. Looks like it, yes.

4 Q. And a configurable horizontal scan rate and area; right?

5 A. Correct.

6 Q. And for this long-range laser, there's a percentage on the
7 right. Do you see that?

8 A. Yes.

9 Q. And that percentage is the percentage of the total amount
10 they get paid if they met that milestone; right?

11 A. That's correct.

12 Q. 6 percent; right?

13 A. Yes.

14 Q. And do you recall how much the total contingent payments
15 were in the eventual deal you made?

16 A. I think it was somewhere around 590 million, something
17 like that.

18 Q. \$590 million. So if Mr. Levandowski made this milestone
19 on time, he gets 6 percent of that; right?

20 A. That's correct.

21 Q. And then another milestone is --

22 A. This was the whole team gets it, not just Levandowski, to
23 be clear.

24 Q. Another milestone is -- you see down there "mid-range" --

25 Well, before we go on to that, on the right-hand side,

1 after they make this protocol long-range laser, once they
2 deliver 50 of them to you, they get 7 percent more of that
3 \$500 million; right?

4 **A.** That's correct.

5 **Q.** And if they can make one that's mass-manufacturing ready,
6 they get another 7 percent of that 500-something million
7 dollars; right?

8 **A.** That's correct.

9 **Q.** Okay. And that's the long-range laser technical
10 milestones, that's what that's referring to?

11 **A.** Yes.

12 **Q.** And there is a different type of laser you wanted, too;
13 right?

14 **A.** It appears to be so, yes.

15 **Q.** The mid-range laser; right?

16 **A.** Yes.

17 **Q.** And if they could develop a prototype of a mid-range laser
18 that had 100 channels that increased -- increased the range 150
19 meters and increased the frame rate to 15 hertz with software
20 support integration, they get another 6 percent of the
21 500-something million dollars; right?

22 **A.** That's what this says, yes.

23 **Q.** But if they didn't do that, they wouldn't get that
24 6 percent; right?

25 **A.** That is not correct.

1 Q. Okay.

2 THE COURT: We have one minute to go.

3 MR. VERHOEVEN: I'll just finish this document, Your
4 Honor, if that's okay.

5 THE COURT: We'll see at 1:00 o'clock. I'll give you
6 two minutes to finish.

7 MR. VERHOEVEN: I only need one minute.

8 THE COURT: All right. You take one minute.

9 BY MR. VERHOEVEN

10 Q. And then if you look to the right-hand side below that
11 mid-range entry -- are you with me?

12 A. Yeah, I'm with you. I'm with you.

13 Q. If they deliver 50 lasers that meet those requirements,
14 they get another 7 percent of the 500 and -- what did you
15 say? -- \$590 million?

16 A. Yes.

17 Q. They get another 7 percent of the \$590 million; right?

18 A. That's correct.

19 Q. And if they get it good enough that it can be mass
20 manufactured, they get yet another 7 percent of the
21 \$590 million; right?

22 A. That's correct.

23 Q. So there are incentives built in here -- and these
24 milestones were pretty aggressive, weren't they?

25 A. I don't know. I don't know what all the milestones are,

1 because there's probably some timing to this.

2 Q. Right. You didn't know that the milestones -- your team
3 didn't tell you the milestones were aggressive?

4 A. I just don't know what they are on here. I wasn't in
5 the -- I was not making this document.

6 Q. You'd agree that the deal that you entered into with
7 payments conditioned on these technical milestones provided a
8 great incentive for Mr. Levandowski to meet these technical
9 milestones, wouldn't you?

10 MS. DUNN: Objection, Your Honor. Assumes facts.
11 He's not established that these were the actual milestones of
12 the deal.

13 THE COURT: Overruled.

14 Please answer.

15 THE WITNESS: Can you ask the question one more time?

16 BY MR. VERHOEVEN

17 Q. Yes. I hope I don't get another objection.

18 You would agree that the way this deal was set up, where
19 Mr. Levandowski and team would get these percentage payments if
20 they made technical milestones by a particular deadline,
21 provided a huge incentive for them not to -- not to miss the
22 deadlines and to develop this technology within the deadlines
23 as soon as they could; right?

24 A. Yes, but they could still get --

25 Q. Thank you, sir.

1 **THE COURT:** Well, no. Go ahead, finish your answer.

2 **THE WITNESS:** They could still get the entire
3 incentive without hitting those deadlines.

4 **THE COURT:** All right. Let's break at this moment.

5 Mr. Kalanick, you've got to be here at 7:30 in the
6 morning. We'll continue with your testimony at that time.

7 The jury will now go back into the jury room. You're
8 excused for the day. But we'll see you at 7:45 in the morning.
9 I thank you for your close attention.

10 **THE CLERK:** All rise for the jury.

11 (Jury exits the courtroom at 1:02 p.m.)

12 **THE COURT:** All right. Mr. Kalanick, you can exit
13 stage left and we'll see you in the morning. Thank you.

14 (Witness steps down.)

15 **THE COURT:** All right. Everyone else be seated.

16 **MR. VERHOEVEN:** I'm sorry. Just for the record, the
17 rule is that no talking to the witness over the evening; right?
18 Is that your ground rule?

19 **THE COURT:** That is correct.

20 Now, he has his own lawyer, so I can't -- I'm not going to
21 stop him from talking to his own lawyer, but these lawyers over
22 here should not talk to him while he's on cross-examination.
23 All right?

24 **MR. VERHOEVEN:** Thank you, Your Honor.

25 **THE COURT:** Now, I have a few things to bring up with

1 you.

2 I misspoke a minute ago on the deposition of Bares. It's
3 actually 44 minutes that you used up. So tell me how that
4 breaks down.

5 **MR. VERHOEVEN:** I thought we got away with one.

6 **THE COURT:** You almost did, but I -- I got some rule
7 here. Okay. Go ahead.

8 **MR. RABIN:** So both parties were treated the same way.
9 We believe the completeness objections would go to the party
10 designating the original testimony --

11 **THE COURT:** No, that's not the way it works. No.
12 Whoever put it in there has to bear the burden of the time.

13 **MR. RABIN:** Okay. So Waymo would be charged with
14 28 minutes and 43 seconds --

15 **THE COURT:** And what about you?

16 **MR. RABIN:** Uber would be charged with 13 and 55.

17 **THE COURT:** Well, that doesn't add up to 44.

18 **MR. RABIN:** The run time shows 42:38 according to the
19 clip sheet.

20 **THE COURT:** Well, I don't -- my run time is 44. I'm
21 giving 30 minutes to Uber -- I'm sorry, to Waymo, 30. And 14
22 goes to Uber.

23 All right?

24 **MR. RABIN:** Your Honor, we also have reached
25 agreements as relates to some exhibits to enter into evidence.

1 **THE COURT:** Fine.

2 **MR. RABIN:** Can I just read them to you?

3 **THE COURT:** How many there are?

4 **MR. RABIN:** About 13, I think.

5 **THE COURT:** Oh, goodness. All right. Go slowly.

6 **MR. RABIN:** 332. 333. 346. 770. 803. 1088. 1089.

7 1096. 1353. 1895. 1991. 2116. 3239. 3564. And 3574.

8 **THE COURT:** 3574?

9 **MR. RABIN:** Yes, Your Honor.

10 **THE COURT:** All right. All of those received in
11 evidence; is that right?

12 **MR. EISEMAN:** Yes, Your Honor.

13 **THE COURT:** Okay. Great. Thank you.

14 (Trial Exhibits 332, 333, 346, 770, 803, 1088, 1089,
15 1096, 1353, 1895, 1991, 2116, 3239, 3564, 3574
16 received in evidence)

17 **THE COURT:** I have two more things. Are there any
18 depositions that I need to rule on and give to you for
19 tomorrow's use? In other words, do you plan on playing
20 depositions like we did today with Bares so I can turn my
21 attention to that?

22 **MR. JUDAH:** I -- yes, Your Honor. Brian McClendon, we
23 are also going to be playing and we have rulings on those.

24 **THE COURT:** What?

25 **MR. JUDAH:** Brian McClendon, we're also going to be

1 playing and I believe you've given us rulings on it.

2 **THE COURT:** I've already given you ruling on -- are
3 you sure?

4 **MR. JUDAH:** I believe so.

5 **THE COURT:** I don't remember doing that.

6 **MR. JUDAH:** Perhaps not. It was handed in along with
7 the Bares --

8 **THE COURT:** Yes, I handed them back, but I did it in
9 order to get you to do it my way.

10 **MR. JUDAH:** We'll resubmit it.

11 **THE COURT:** All right. Work with Angie because I need
12 to get it today if I'm going to work on it.

13 All right. So McClendon will be your only one; right?

14 **MR. PERLSON:** Yes, Your Honor.

15 **THE COURT:** Great. Thank you.

16 And then for the benefit of the record -- you don't have
17 to do this today or tomorrow, but remember, you've got to do it
18 eventually. For the benefit of the record on appeal, you need
19 to put in a disk that has the exact deposition video that's
20 been played. It can't have an extra word or two. It's got to
21 be exactly what the jury saw.

22 I know you have the ability to do this, but it has to be
23 done eventually. Otherwise, your record on appeal will be
24 inadequate or at least a gap in it.

25 All right. I think that's all that I have for -- on my

1 list.

2 **MS. GOODMAN:** Your Honor, I mentioned I had one
3 housekeeping matter, which is Waymo disclosed its first expert
4 witness and Uber's cross-exam disclosures would be due this
5 afternoon.

6 Based on your Honor's comments at the last pretrial
7 conference, we understand documents that the expert did not
8 rely upon would not have to be disclosed as that would be sort
9 of proper impeachment for an expert. We just wanted to clarify
10 that with Your Honor.

11 **THE COURT:** Well, if it's for impeachment only.

12 Now, remember, it won't come into evidence. Just the --
13 the little passage would be -- would be read into the record in
14 front of the jury. So that's one thing to keep in mind.

15 But the -- there is a rule -- and I'm -- I'm blanking on
16 it. There are limits on what you can on cross-examination try
17 to impeach the expert with because they did not consider
18 something, and I don't have that clearly in mind right now.

19 So I just don't want to just give you a blank check to
20 confront the expert with whatever you think happens to help
21 your case. So I -- I don't know. Give me an example so that I
22 can help you understand the problem.

23 **MS. DUNN:** So let's say that an expert has an opinion
24 about a fact or about an aspect of this case, but he did not
25 look at exhibits that would be relevant to his opinion.

1 In my experience, it's possible to use those with the
2 experts. They're part of the record in the case or they'll be
3 proved up later. And then the expert can say, you know, no,
4 this wouldn't change any opinion or, you know, I didn't
5 actually consider this or whatever. But that does not have to
6 be disclosed.

7 It's not like pulling out things in the world, the broader
8 world at large.

9 **THE COURT:** Well, all right. It's okay -- there are
10 two parts to the answer.

11 It's okay to say to the expert, "Did you consider records
12 within your own client's company on the very subject that you
13 are testifying to today?"

14 Answer, "No."

15 And then you feign shock and surprise.

16 And then you say, "What? You didn't ask your own" -- I
17 guess it would be Waymo. "You didn't ask Waymo for that file
18 that would have shown how many -- how quickly they were able to
19 solve that problem?"

20 "Uh, no."

21 Now, but for you then to -- and then you could say, "Well,
22 if there were evidence" -- you have to have a good faith
23 basis -- "that they solved the problem in five minutes and
24 14 seconds, would that change your opinion?"

25 And he says, "No."

1 And you say, "Really? Something they could do in five
2 minutes and 14 seconds wouldn't change your opinion?

3 "No."

4 But I -- for you then to parade in front of him a bunch of
5 documents that he has not seen and you're going to otherwise be
6 able to get into evidence, I'm not so sure that that -- you can
7 go down that path. But you can certainly do the first thing.

8 **MS. DUNN:** I think the second path, Your Honor, is
9 fairly standard to show the expert things in the case that
10 would bear on his opinion. Our question really is whether we
11 need to disclose that or not.

12 **THE COURT:** Well, are you trying to get it into
13 evidence or are you trying just to --

14 **MS. DUNN:** No, every -- I'm sorry, Your Honor.

15 **THE COURT:** Is it going to come into evidence later or
16 --

17 **MS. DUNN:** Or already in evidence, one or the other.

18 **THE COURT:** Well, if it's already in evidence -- okay.
19 Well, that -- well, you didn't tell me that.

20 If it's already in evidence, then you can use it for
21 impeachment and you don't have to give any disclosure on that
22 if it's for true impeachment. But it would have to be
23 something that really does contradict what the witness has
24 said. It can't be just you're building point by point your
25 overall case-in-chief argument. It's got to be -- let's say

1 that -- let's say that the witness says, "In my opinion" --
2 well, let's say it's a Waymo witness. And the Waymo witness
3 says, "In my opinion, Uber would not have made their milestones
4 for 20 years." That's what the witness says. And they
5 desperately needed Levandowski to cut that back.

6 And you've got an internal document from Waymo that says
7 they can do it in three years. And then you -- sure, I'd let
8 you do that, but I am not --

9 **MS. DUNN:** This is a --

10 **THE COURT:** I'm not going to -- I'm just not going to
11 allow you to hijack their case with trying to build your own
12 argument document by document on things that -- unless it just
13 cries out that he should have considered it.

14 **MS. DUNN:** Well, that's -- that's a circumstance, Your
15 Honor, is that if you have an expert who's rendering an opinion
16 and that there are exhibits in the case that are in or coming
17 in and that --

18 **THE COURT:** Well, in or coming in are two different
19 things.

20 **MS. DUNN:** Well, in a previous hearing you said that
21 we could use --

22 **THE COURT:** If you convince me you're going to get it
23 in somehow.

24 **MS. DUNN:** Right.

25 **THE COURT:** But sometimes I hear that and it never

1 comes in.

2 **MS. DUNN:** All right. So tabling that for a second.

3 You know, we wouldn't use with the experts exhibits that
4 were not germane to the issues that he was opining on,
5 obviously, but I do think that -- that if the expert's going to
6 opine on issues in the case, that we should be able to ask him
7 about evidence in the case that bear on those opinions.

8 **THE COURT:** If you have a document that's already in
9 evidence that directly contradicts a point that is being made
10 by the expert, it's okay with me for you to use that as
11 impeachment and not disclose it.

12 But if it's big-firm impeachment, which is a sideswipe and
13 it doesn't directly hit them, I'm going to probably say you're
14 out of luck on that and save it for your own expert.

15 **MS. DUNN:** Your Honor, I --

16 **THE COURT:** But it's got to be clear. It can't be
17 big-firm impeachment.

18 **MS. DUNN:** We don't want to do big-firm impeachment.
19 And I think the answer may be we'll just disclose.

20 **THE COURT:** Well, good.

21 **MS. DUNN:** So there you go.

22 **THE COURT:** That solved that problem, but you --
23 still, I -- I'll give you some flexibility to use the kind of
24 impeachment that I -- that I'm talking about.

25 **MS. DUNN:** Thank you.

1 **THE COURT:** All right. What else do you want to bring
2 up with the judge?

3 **MR. VERHOEVEN:** Nothing from plaintiff, Your Honor.

4 **THE COURT:** How about over there?

5 **MR. CARMODY:** Nothing else, Your Honor.

6 **THE COURT:** Great. So we'll see you at 7:30 in the
7 morning.

8 Oh, give us a heads up. Who's going to come after
9 Mr. Kalanick?

10 **MR. PERLSON:** Mr. McClendon. Mr. McClendon by video
11 will be up, and it's pretty short.

12 **THE COURT:** All right. So I need to get that
13 McClendon thing done today.

14 All right, everybody. See you tomorrow. Have a good day.

15 (Whereupon at 1:14 p.m. further proceedings were
16 adjourned until Wednesday, February 7, 2018 at
17 7:30 a.m.)

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CERTIFICATE OF REPORTER

We certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Debra L. Pas

Debra L. Pas, CSR 11916, CRR, RMR, RPR

Katherine Sullivan

Katherine Sullivan, CSR 5812, CRR, RMR

Tuesday, February 6, 2018